District of Hawaii

IN BRIEF

Process summary

ADR generally. The District of Hawaii has no formal ADR procedures.

Magistrate judge settlement conferences. The magistrate judges have an extensive settlement conference practice.

Of note

Plans. The CJRA advisory group is reviewing prospective ADR programs for the district.

For more information

Alan C. Kay, Chief U.S. District Judge, 808-541-1904

District of Idaho

IN BRIEF

Process summary

Arbitration. In its CJRA plan, effective March 1, 1992, the District of Idaho authorized an arbitration program. See below.

Magistrate judge settlement conferences. The court systematically identifies cases in which discovery is complete and a settlement conference would be appropriate. Suitable cases are referred to a magistrate judge for a settlement conference. If counsel object to the referral, they must state their reasons in writing.

Of note

Obligations of counsel. The court requires counsel to read the court's ADR information and to discuss ADR options with their clients.

Information from court. In cases selected by the court, counsel are sent information explaining the availability of arbitration and the court's *Arbitration Rules and Procedures,* which describe the procedure in detail.

Plans/evaluation. The CJRA advisory group evaluated the effects of the voluntary arbitration program and found a number of problems, including timing, evidence, confidentiality, and relinquishment of decision-making power. They concluded that the bar is much more familiar with mediation and would be more likely to use mediation than arbitration. The court has subsequently established a mediation program (see General Order 121, adopted November 6, 1995). The court also hopes to reformulate the arbitration program and offer a form of neutral case valuation.

For more information

Tom Murawski, Administrative Supervisor/ADR Coordinator, 208-334-9205

IN DEPTH

Arbitration in Idaho

Overview

Description and authorization. Under its CJRA plan, effective March 1, 1992, the District of Idaho established a voluntary arbitration program. Any civil case not involving prisoners is eligible for arbitration at the parties' discretion. Arbitration may occur at any stage in the case, although the court considers it more beneficial if substantial discovery has taken place. If the parties choose arbitration, they and the court select one or three arbitrators from the court's list of trained attorney-neutrals. There is no penalty for not accepting an arbitration award, and parties who consent to arbitration do not lose their position on the judge's trial calendar. Parties who choose arbitration are encouraged to agree that the decision will be binding. The court's program, which is not within the ambit of 28 U.S.C. §§ 651–658, is described in the court's *Arbitration Rules and Procedures*.

Number of cases. Between January and November 1994, no cases were referred to arbitration.

Case selection

Eligibility of cases. Almost all civil cases are eligible for arbitration, except prisoner cases.

Referral method. The court notifies parties in appropriate cases of the availability of arbitration and systematically targets some cases at certain stages of the litigation to remind them of the availability of the procedure. The arbitration process, however, is initiated only if a party requests it. If one party requests arbitration, the court attempts to secure the participation of the other parties.

Opt-out or removal. There is no procedure for removal because referral occurs only at the consent of all parties.

Scheduling

Referral. Parties may request arbitration at any stage in the case, but the court considers is more beneficial if substantial discovery has taken place.

Discovery and motions. Other events in the case are not stayed during the arbitration process. Cases that participate in arbitration keep their position on the assigned judge's calendar, and the judge retains responsibility for overall management of the case. The arbitrator has authority, however, to decide all matters relating to the arbitration, including arbitration discovery issues.

Written submissions. At least ten days before the arbitration hearing, each party must provide to the arbitrator and all parties a summary of the facts and legal positions, relevant documentation supporting the claims, and a list of witnesses.

Arbitration hearing. Unless the parties agree otherwise or show good cause, the arbitrator conducts the hearing between twenty and ninety days after notification of selection of the arbitrator. The hearing must be held at least sixty days before the scheduled trial. The arbitrator designates the location for the hearing and, unless otherwise agreed to by the parties, schedules the hearing during business hours.

The arbitrator is authorized to administer oaths, and all testimony is under oath. The scope and length of the hearing are determined by the arbitrator. In receiving evidence,

the arbitrator is guided by the Federal Rules of Evidence but is not precluded from requesting other relevant evidence that is not privileged.

Length of hearing. This information is not yet available.

Program features

Party roles and sanctions. All counsel and parties, including individual litigants, representatives of corporate parties, and insurance carriers, are required to attend the hearing unless excused by the arbitrator. The court's plan does not specify whether or what type of sanctions might be imposed for failure to comply with the attendance and other requirements.

Filing of award. Within thirty days of the hearing, the arbitrator must provide the parties a written award. When the arbitrator serves the award, the court is notified of this action but not of the decision itself, which is sealed. If the parties accept the arbitration award, it is filed and entered as the judgment. If the parties do not accept the award, they must notify the court within thirty days of receipt of the award.

De novo request. Any party not satisfied with the award must file a written demand for trial de novo within thirty days of receipt of the award.

Confidentiality. No recording may be made without consent of all the parties. No ex parte communication between the arbitrator and any counsel or party is permitted. All memoranda and other materials are confidential and are returned to the parties after the arbitration process. Any communication made during the process by any participant is confidential, is not subject to discovery, and may not be submitted in subsequent proceedings in the case. The arbitration award itself is sealed.

Neutrals

Qualifications and training. To be eligible for the court's roster, applicants must (1) have been admitted to practice for five years or have special expertise in arbitration, (2) be a member of the bar or a retired judge or attorney, (3) have experience in complex cases, and (4) have attended a comprehensive arbitration training session. Arbitrators must also complete a one-day training session conducted for the court by expert trainers.

Selection for case. If the parties agree to arbitrate the case, the court provides a list of arbitrators. The parties may indicate their preferences, but the court makes the final selection. In large, complex cases, the parties may select three arbitrators. If the parties agree, they may select an arbitrator not on the court's roster.

Disqualification. No person may serve as an arbitrator in an action in which any of the circumstances set forth in 28 U.S.C. § 455 exist. All arbitrators are also governed by the American Arbitration Association's Code of Ethics for Arbitrators in Commercial Disputes.

Immunity. The court's rules do not address immunity.

Fees. Each arbitrator receives $100 per hour, paid by the parties and usually shared jointly. In large, complex cases, the arbitrators and parties may negotiate the fee.

Program administration

The arbitration program is administered by the clerk's office.

Central District of Illinois

IN BRIEF

Process summary

ADR generally. The Central District of Illinois has not established court-based ADR programs. Two judges on the court occasionally use a minitrial or summary jury trial to assist the parties in settlement. The court's CJRA advisory committee has recommended further exploration of ADR.

For more information

Michael M. Mihm, Chief U.S. District Judge, 309-671-7113

Northern District of Illinois

IN BRIEF

Process summary

ADR generally. On a case-by-case basis, some judges refer cases to ADR procedures, including mediation, arbitration, minitrials, summary jury and bench trials, and special settlement masters. Except for summary trials, which are conducted by judges, most ADR services are provided by private providers. Judges on the court differ considerably in the extent of their ADR use.

Judicial settlement conferences. The judicially hosted settlement conference is the most widely used settlement process in the Northern District of Illinois. Settlement conferences may be ordered by the assigned judge or at the request of one or all parties and may be hosted by the assigned judge, another district judge, or a magistrate judge. Where parties have consented to trial before a magistrate judge, a district judge may host the settlement conference. Under the court's standard order on pretrial procedure, litigants are required to assess settlement prospects before filing a final pretrial order.

Of note

Information from court. The court is preparing a pamphlet for litigants on private ADR resources available in the community. In addition, if the proposed trademark mediation program is adopted (see below), litigants in eligible cases will receive written information from the court on that program.

Plans. The court is considering a proposed amendment to the local rules authorizing a court-wide mediation program for trademark cases arising under the Lanham Act (15 U.S.C. §§ 1051-e). The court would provide parties with a list of mediators with expertise in Lanham Act disputes. Participation in the program would be based on party consent.

Evaluation. As one of the ten comparison districts under the CJRA, the Northern District of Illinois is part of the RAND study of the pilot and comparison districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

Perry J. Moses, Chief Deputy Clerk, 312-435-5677

Southern District of Illinois

IN BRIEF

Process summary

Judicial settlement conferences. The primary settlement program in the Southern District of Illinois is a mandatory settlement conference program, authorized by Local Rule 11(c) and the CJRA plan, which became effective December 27, 1991. All civil cases are eligible. The assigned judge or a magistrate judge selects the cases referred to settlement conferences. Parties can seek to withdraw from the mandatory referral by motion. A judge other than the assigned trial judge conducts the conference, which in most cases is held within forty-five days of the discovery cutoff, although it may be held earlier at the request of a party. Before the conference, each party files a brief, confidential settlement statement with the settlement judge. In addition to lead counsel, parties or insurers with full settlement authority are required to attend the conference, which is confidential.

Summary jury trial (SJT). One judge has made occasional use of the summary jury trial.

Of note

Obligations of counsel. Counsel are encouraged to discuss ADR with their clients. The court generally discusses the possibility of voluntary ADR use with counsel at the initial pretrial scheduling conference.

Information from court. A brochure prepared by the court to introduce ADR is distributed to all counsel at filing. Also available from the clerk of court is a partial listing of national and local ADR organizations that offer assistance to litigants.

For more information

Any U.S. magistrate judge in the Southern District of Illinois

Northern District of Indiana

IN BRIEF

Process summary

Mediation. Under Local Rule 53.2, the Northern District of Indiana has established a mediation program. See below.

Judicial settlement conferences. The Northern District of Indiana requires parties in almost all civil cases to participate in a settlement conference with a district or magistrate judge. Settlement is first discussed at the initial pretrial conference. When media-

tion has not resolved the case, a settlement conference is scheduled between the final pretrial conference and the trial date. Five days before the settlement conference, counsel must submit a settlement statement setting out (1) the legal and factual contentions of the parties as to both liability and damages; (2) the factors considered in arriving at the current settlement posture; and (3) the status of settlement negotiations to date.

Of note

Obligations of counsel. Counsel must discuss mediation with their clients and must be prepared to discuss mediation and the selection of a mediator with the assigned judge.

Evaluation. As one of the ten comparison districts under the CJRA, the Northern District of Indiana is part of the RAND study of the pilot and comparison districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

William C. Lee, U.S. District Judge, 219-422-2841
Kathryn Brooks, Deputy Clerk in Charge, Fort Wayne Division, 219-424-7360

IN DEPTH

Mediation in Indiana Northern

Overview

Description and authorization. Under Local Rule 53.2, most civil cases in the Northern District of Indiana must participate in a single, mandatory mediation session conducted by an attorney or non-attorney-mediator selected from the court's roster. The program has been in effect since 1991. The mediation session, which is confidential, may occur at any time appropriate for the case but no later than ten days before the final pretrial conference. The court believes the session is most beneficial if some discovery has taken place. Parties must submit a confidential statement to the mediator before the mediation session and must attend in person. The role of the mediator is to help the parties resolve the case by mutual agreement. If asked by the parties, the mediator may also provide a confidential evaluation of the merits and value of the case. The parties and the mediator agree on a fee, which is split evenly by the parties. The specific procedures are stated in mediation orders issued by the individual judges.

Number of cases. During 1994, approximately 100 cases were referred to mediation.

Case selection

Eligibility of cases. Most civil case types are eligible for referral to mediation. Excluded are all cases exempted from the Rule 16 scheduling order and cases that involve pro se parties.

Referral method. All eligible cases are automatically referred to mediation. Parties receive notice of referral in the Notice of Preliminary Pretrial Conference and discuss the referral with the judge at the preliminary pretrial conference. Only one mediation session is mandatory. Others may be held at the parties' discretion.

Opt-out or removal. To be removed from mediation, parties must seek written leave of the court.

Scheduling

Referral. Cases are referred to mediation at the initial pretrial scheduling conference.

Written submissions. Five days before the mediation session, each party must submit to the mediator a confidential settlement statement of ten pages or less, which is not filed in the record or served on other parties. The statement must set out (1) the legal and factual contentions of the parties as to both liability and damages; (2) the factors considered in arriving at the current settlement posture; and (3) the status of settlement negotiations.

Mediation session. The mediation session may occur at any time but not later than ten days before the final pretrial conference. The parties schedule the time and place for the session.

Number and length of sessions. Only one mediation session is mandatory, but others may be scheduled if all agree that it would be worthwhile. No specific length of time is suggested.

Program features

Discovery and motions. All other case events go forward during the mediation process. In a few instances discovery has been stayed because the parties thought the prospects for settlement were good. Leave of the court is needed to stay discovery or any other scheduled event.

Party roles and sanctions. Attendance by all parties is mandatory. If an insurance company is involved, the court requires a person with full settlement authority to be present if possible or continuously available by telephone. Parties must obtain leave of court to participate by telephone or to be excused from participation. The court may impose sanctions on any party or counsel who fails to comply in good faith with the order to mediate.

Outcome. At the close of the mediation process the mediator files a short report noting the status of settlement negotiations and providing any comments that would be helpful in achieving settlement. The report, which is kept in a file in the clerk's office, is not part of the official record and is not made available to the public. Parties may request that the information in the report be kept confidential or that the terms of settlement, if there is one, be kept confidential. In such instances, no further report is made.

Confidentiality. Parties may request that the mediation discussions and outcome be kept confidential.

Neutrals

Qualifications and training. The court's roster is composed of attorneys and non-attorneys who have responded affirmatively to a court questionnaire asking whether they wish to be listed on the roster of mediators. The roster notes the individual's areas of expertise and whether he or she is certified by the state of Indiana as a trained mediator or has received formal training in mediation.

Selection for case. Parties must come to the preliminary pretrial conference with an agreed-on name of a mediator selected from the court's roster. If the parties cannot agree on a mediator, the court appoints one from its roster.

Disqualification. The court has not established rules for disqualification.

Immunity. The court does not specify protections for the mediators but is aware of a recent D.C. Circuit decision, *Wagshal v. Foster,* 28 F.3d 1249 (D.C. Cir. 1994) (court-ap-

pointed mediator or neutral case evaluator has quasi-judicial immunity when performing official duties).

Fees. The parties and mediator must agree on a fee, to be divided equally by the parties and to be paid within thirty days of the mediation session. Indigent parties may petition the court to modify the mediation fee.

Program administration

The magistrate judge who is responsible for all pretrial matters in the case supervises the mediation process.

Southern District of Indiana

IN BRIEF

Process summary

Mediation. By Local Rule 53.2 and the CJRA plan, effective December 31, 1991, the Southern District of Indiana has authorized use of mediation in cases where all parties agree to participate in the procedure. See below.

Summary jury trial (SJT). One judge uses the summary jury trial.

Magistrate judge settlement conference. Settlement is explored at every pretrial conference, and nearly every case is referred to a settlement conference with a magistrate judge. Parties generally do not attend, although the magistrate judge is authorized to require their attendance. Magistrate judges may engage in shuttle diplomacy and, if the parties do not reach agreement but appear to be moving, will often propose a settlement for each side to consider. The magistrate judge reports settlement progress to the assigned judge.

Of note

Obligations of counsel. Attorneys are required to discuss ADR with their clients and with each other and to address in their case management statement the suitability of ADR for their case. They must also be prepared to discuss ADR options for the case with the assigned judge.

Information from court. A proposal for an ADR brochure is currently under consideration.

Plans/evaluation. Before the court considers future ADR developments, it will evaluate the conclusion of an ongoing study of current procedures, which is being conducted by the CJRA advisory group.

For more information

John Paul Godich, U.S. Magistrate Judge, 317-226-7572

IN DEPTH

Mediation in Indiana Southern

Overview

Description and authorization. Under Local Rule 53.2 and the CJRA plan, effective December 31, 1991, judges in the Southern District of Indiana may, with the consent of the parties, set any appropriate case for mediation. Parties in cases referred to mediation select a mediator from a certified list maintained by the state Supreme Court for the state system and pay the attorney's standard hourly fee. Referral to mediation may occur at any appropriate time, and other case activities may or may not be suspended during the mediation process. Cases referred to mediation remain subject to a settlement conference with a district or magistrate judge.

Number of cases. From January to December 1994, approximately 150 cases used mediation, but since attorneys do not always report their use of the procedure to the court, the exact number is not known.

Case selection

Eligibility of cases. All types of cases may be mediated, but personal injury cases are the most common referral. No type of case is presumed to be ineligible.

Referral method. Referral to mediation requires consent of all the parties. Usually the process originates with the parties, although district and magistrate judges or court staff also may suggest mediation at a pretrial conference.

Opt-out or removal. No opt-out or removal procedure is necessary, as referrals are always by party choice.

Scheduling

Referral. A referral to mediation may occur at the initial scheduling conference, after discovery has been completed, or at any other appropriate time.

Written submissions. Discretion lies with the attorney-mediator whether and when to request written submissions. Usually each side gives the mediator a confidential settlement statement.

Mediation session. Mediation sessions are arranged by the mediator and are held at the mediator's office.

Number and length of sessions. Mediation sessions last two to four hours. Typically one or two sessions will suffice, but many mediators schedule multiple conferences until the case is settled or an impasse is reached.

Program features

Discovery and motions. Discovery and other case activities are usually suspended during the mediation process, but they may go forward. Parties may request suspension of discovery, which is subject to court approval.

Party roles and sanctions. The mediators usually order parties to attend. There are no sanctions for noncompliance with mediation. Since the process is consensual, the need rarely arises.

Outcome. The court does not require any filings at the conclusion of mediation, but parties usually file a stipulation of dismissal if mediation has settled the case.

Confidentiality. Confidentiality is not addressed by Local Rule 53.2. By local custom and practice, the parties expect mediators to maintain confidentiality.

Neutrals

Qualifications and training. To be placed on the certified list of mediators, applicants must have been admitted to the bar and must have completed a forty-hour certification training program required by the state Supreme Court. They must also have had five hours of training in the two years before they apply to be on the list.

Selection for case. The parties select a mediator from a list of certified mediators maintained by the state Supreme Court.

Disqualification. This subject is not addressed in Local Rule 53.2. The state Supreme Court Rule 2.5 states that a mediator may not have an interest in the outcome of the litigation or be employed by or related to the parties.

Immunity. The court states that the issue of immunity is unresolved.

Fees. The parties pay the mediators their usual hourly attorney's fee.

Program administration

The program is administered on a case-by-case basis by the assigned judge, the magistrate judge, and their courtroom deputies.

Northern District of Iowa

IN BRIEF

Process summary

Magistrate judge settlement conferences. In the Northern District of Iowa, most civil cases, excluding prisoner, Social Security, habeas, and routine collection cases, are eligible for referral to a settlement conference. The assigned judge may refer a case to a magistrate judge for settlement without party consent. Generally the referral occurs in cases that have not settled by the time of the final pretrial conference, although the judges may refer cases at other times if appropriate or if requested by the parties. The parties are notified of the referral by order of the court and must attend the conference. Sanctions may be imposed for noncompliance.

In the settlement conference, the magistrate judge meets with the parties to try to reach settlement. Shuttle diplomacy may be used, but the magistrate judge does not offer an evaluation of the case or give a decision. Settlement conferences take about five hours. The court has an informal policy that the settlement judge will not discuss the particulars of the settlement conference with the presiding judge if the case does not settle.

The court's program, which is called mediation, has not been encoded in written rules or orders, although it is an established procedure in the court. Approximately forty cases were referred to magistrate judge settlement conferences between January and September 1994.

Summary jury trial (SJT). On occasion a judge has held a summary jury trial.

Of note

Obligations of counsel. Counsel must discuss ADR options in the Rule 16 scheduling report.

Plans. The court is in the process of adopting a court-based mediation program using attorney-neutrals who will serve without compensation.

For more information

John A. Jarvey, Chief U.S. Magistrate Judge, 319-364-4509

Southern District of Iowa

IN BRIEF

Process summary

Judicial settlement conferences. Judicial settlement conferences, also called mediation conferences by the court, are an established but not specifically authorized ADR method in the Southern District of Iowa. Almost any civil case is eligible for referral, but referral is most common in lengthy cases. Prisoner, foreclosure, Social Security, and seizure cases are not eligible. Referral to settlement may occur at any time appropriate for the case, including before, during, or after trial. The parties may request a settlement conference, and the district and magistrate judges may refer cases sua sponte. Two district judges routinely refer cases 120 days before trial. After the referral order, a magistrate judge holds a telephone conference with counsel to explore settlement prospects. If settlement appears unlikely, a conference is not scheduled or is scheduled for later in the case.

Before a settlement conference, each party must submit a brief summary of factual and legal issues to the settlement officer, and at least three days before the conference, parties must submit to the settlement officer a concise statement of the evidence to be produced at trial. These documents are not given to other parties in the case or filed with the court. The settlement officer—a judge not assigned to try the case—meets with counsel and the parties to discuss settlement options. The settlement officer caucuses separately with each side and may make suggestions about case value if appropriate. The settlement proceedings are protected by the confidentiality provisions of the Federal Rules of Evidence.

Parties must attend the settlement conference, although the court will permit attendance by telephone under some circumstances (e.g., distance, poverty, or representation by an insurance company). Failure to attend, as well as failure to comply with any aspect of the settlement process, may result in sanctions. The first settlement conference typically lasts two to four hours. If a settlement is not reached, additional sessions may be held at the discretion of the settlement officer and are often conducted by telephone.

At the conclusion of the settlement conference, the settlement judge files an order stating whether the case settled. If it did, a date for submission of closing documents is specified in the judge's order. Between January and September 1994, approximately seventy-five cases were referred to judicial settlement conferences.

Settlement week calendar. In addition to their regular settlement work, once each year the magistrate judges receive additional cases for settlement conferences. During

the 90- to 120-day period before the court's April master trial calendar (held for short trials), the magistrate judges hold settlement conferences in the cases set on the calendar. In 1994, 51 cases were set.

Appointment of special master for settlement. By special order of the court, a special master, working with a magistrate judge, was appointed to settle a large number of asbestos cases. He is now serving as settlement master in a major products liability case.

Summary jury trial (SJT). By court order and with consent of the parties, the court may refer lengthier, complex civil cases for a summary jury trial.

Of note

Obligations of counsel. Attorneys must be prepared to discuss ADR options with the assigned judge and must discuss in the case management statement the suitability of ADR for the case.

Plans. The court is considering early neutral evaluation conducted by the magistrate judges. The court may also establish a triggering mechanism for referral to settlement in all cases at the time of the order setting trial and may use nonjudicial adjuncts with appropriate training to conduct the settlement conferences.

For more information

Celeste F. Bremer, Chief U. S. Magistrate Judge, 515-284-6200

District of Kansas

IN BRIEF

Process summary

Mediation. In the District of Kansas, each district judge is authorized to refer almost any civil case on his or her docket to a mandatory mediation conference conducted by an attorney-mediator. See below.

Other ADR. In addition to mediation, Local Rule 214 and the court's CJRA plan approve most forms of ADR, including minitrials and summary jury trials.

Of note

Obligations of counsel. Attorneys must discuss ADR options with their clients and with opposing counsel and demonstrate in their case management plan that they have done so. They must also be prepared to discuss ADR with the judge.

For more information

Richard C. Hite, Coordinating Attorney, 316-265-7761
John Thomas Reid, U.S. Magistrate Judge, 316-269-6411

IN DEPTH

Mediation in Kansas

Overview

Description and authorization. In the District of Kansas, each district judge is authorized to refer almost any civil case to a mandatory mediation conference conducted by an attorney-mediator, a magistrate judge, or a trial judge other than the assigned judge. The district-wide mediation program is authorized by the court's CJRA plan, effective December 31, 1991, and by amended Local Rule 214. The program is based on the mandatory mediation process instituted in the Wichita division in 1984. Under the current program, most civil cases are referred to mediation, and each judge uses his or her own mediation protocols and orders. The session is confidential, attendance by a party representative with settlement authority is required, and the mediator is authorized to provide an evaluation of the merits of the case at the request of the parties. Joint and private sessions are used.

Litigants are encouraged to select a mediator from the court's roster of trained mediators. When a mediator is selected, the litigants pay a court-set fee of $125 per hour, shared equally by the parties. Cases in which a litigant is unable to pay a mediator's fee are referred to a magistrate judge for mediation.

Number of cases. Approximately 270 cases were referred to mediation between January and September 1994.

Case selection

Eligibility of cases. Almost all civil cases are eligible for mediation. Social Security appeals, bankruptcy appeals, and certain cases involving the United States are generally not referred to mediation.

Referral method. Each judge has the discretion to refer any case to a mandatory mediation conference, and each judge follows his or her own protocol for referral. Generally, however, shortly after a case is at issue the assigned judge enters a scheduling order that urges the parties to explore settlement and mandates a mediation conference.

Opt-out or removal. The assigned judge may remove a case from mediation if the court finds the process would be futile. Requests for removal are rare.

Scheduling

Referral. Notice of the mandatory referral to mediation is sent to the parties in a scheduling order shortly after the case is at issue.

Written submissions. Counsel are encouraged to submit short premediation statements to the mediator describing the factual and legal issues and the relief sought. The statements, which are not filed with the court, may or may not be shared with opposing counsel, depending on the details of the court's order.

Mediation session. After discussion with counsel at a status conference held about thirty days after the initial scheduling order, the assigned judge sets the date and time frame for the mediation session. Early in the mediation program, most cases were set for mediation shortly before trial. As the program has developed, litigants are requesting earlier mediation conferences, often before substantial discovery has occurred. The mediation session is generally held at the office of the mediator, but it may also be held at the courthouse. Exhibits, expert witness reports, and other aids may be used at the mediation session.

Number and length of sessions. A typical mediation session in a standard case lasts about four hours. In such cases, mediation generally involves only one session.

Program features

Discovery and motions. Typically, some discovery takes place before the mediation session. Some judges may suspend discovery and motions activity around the time of the mediation session.

Party roles and sanctions. In addition to trial counsel, a party representative with settlement authority must attend the mediation session. When the United States is a party, the requirement is met by attendance of the U.S. attorney for the District of Kansas. If the person with settlement authority cannot attend, the conference is rescheduled or appropriate accommodations are made on a case-by-case basis. The court's mediation rule does not specify whether or what type of sanctions might be imposed for failure to comply with the attendance and other requirements.

Outcome. The mediator is asked to report to the judge only whether the case settled. Some judges require this in writing, others do not.

Confidentiality. Mediation conference statements, memoranda submitted to the court, and any other communications that take place during the mediation process may not be used by the parties in the trial of the case. The mediator is barred from discussing the mediation conference with the trial judge.

Neutrals

Qualifications and training. The court developed a district-wide list of attorney-mediators after consultation with all interested bar associations, review by a committee of the court, and approval by the full court. The criteria for selection include ten years in civil trial litigation and a good reputation. The court provides training for new mediators.

Selection for case. District and magistrate judges, as well as attorneys, may serve as mediators. If an attorney is desired, the parties generally select the mediator from the court's roster of approved neutrals. Litigants are also free to select a mediator outside the court's list.

Disqualification. The court has no formal guidelines for disqualification and reports that conflicts are generally addressed by the parties and the mediator. If a conflict becomes evident, the mediator informs the court.

Immunity. The court does not have a rule regarding immunity but is discussing the issue. The court's view is that the mediator's role is quasi-judicial and entitled to quasi-judicial immunity.

Fees. When an attorney-mediator is selected, the parties equally share the mediator's court-set fee of $125 per hour. No charges are incurred if a judge hosts the mediation.

Program administration

The mediation program is administered by each district judge for cases referred by that judge. Courtroom deputies handle ministerial issues and the assigned judge deals with substantive matters.

Eastern District of Kentucky

IN BRIEF

Process summary

ADR generally. The Eastern District of Kentucky has not established a district-wide ADR program, but the court's CJRA advisory group has proposed that the court adopt ADR procedures. In the Lexington division, litigants are advised of the availability of a private for-fee mediation service. Use of this service is wholly voluntary. In the Covington division, litigants are advised of the availability of a voluntary nonbinding arbitration program administered by the state courts.

Judicial settlement conferences. Each judge has his or her own procedures for settlement conferences.

Of note

Evaluation. As one of the ten comparison districts established by the CJRA, the Eastern District of Kentucky is included in the RAND study of the pilot and comparison districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

William O. Bertelsman, Chief U.S. District Judge, 606-655-3800

Western District of Kentucky

IN BRIEF

Process summary

Mediation. The Western District of Kentucky is conducting an experimental mediation program in which any civil case is eligible for referral to mediation with the consent of the parties. See below.

Arbitration. The Western District of Kentucky is one of ten courts authorized by 28 U.S.C. §§ 651–658 to establish a voluntary, nonbinding court-annexed arbitration program. The court has chosen not to implement such a program.

Other ADR. The court has approved but not implemented an early neutral evaluation program. Occasionally, cases are referred to summary jury or bench trials conducted by a magistrate judge.

Judicial settlement conferences. All judges conduct settlement conferences, and many cases are referred to the magistrate judges for settlement conferences.

Of note

Obligations of counsel. Attorneys must be prepared to discuss ADR with the judge and must discuss in their case management statement whether ADR would be suitable for their case.

Plans. Mediation and early neutral evaluation are not yet implemented via local rule. The goal of the judges is district-wide implementation.

Evaluation. As one of the ten comparison districts under the CJRA, the Western District of Kentucky is part of the RAND study of the pilot and comparison districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

John G. Heyburn II, U.S. District Judge, 502-582-6648

IN DEPTH

Mediation in Kentucky Western

Overview

Description and authorization. In the Western District of Kentucky the judges have over the years made occasional referrals to mediation. More frequent use began in 1993, and the court is now conducting a pilot mediation program in which all civil cases are eligible for mediation with the consent of the parties. Although all the judges refer cases to mediation, the court has not established formal rules for the program, and the judges vary in their frequency of referral to mediation. Each judge fashions the procedure as needed for the specific case and maintains his or her own list of mediators consisting of both attorneys and other qualified persons. Counsel may also recommend another mediator for the court's consideration. The parties pay the mediator's fee.

Number of cases. Between November 1, 1993, and November 1, 1994, twenty-eight cases were referred to mediation.

Case selection

Eligibility of cases. All cases are eligible for mediation. No case types are excluded from consideration for mediation.

Referral method. Cases are referred with the consent of the parties on a case-by-case basis.

Opt-out or removal. There is no opt-out procedure because referral occurs only with party consent.

Scheduling

Referral. Referral may be made at the initial scheduling conference or at any other time appropriate for the case.

Written submissions. The mediator determines whether any materials should be submitted before the mediation session.

Mediation session. The district judge sets the time limits for the mediation process after consultation with the parties. The neutral and the parties make arrangements for the mediation session, which can be held at the courthouse, the neutral's office, or elsewhere, depending on the needs of the parties.

Number and length of sessions. The length and number of sessions are determined by the mediator and parties. The district judge, after consultation with the parties, sets the total period of time to be given to the mediation process and monitors compliance.

Program features

Discovery and motions. Other case activities are suspended during the mediation process, unless something is needed to facilitate the mediation.

Party roles and sanctions. Party attendance is determined by the mediator and counsel. The court has not established authorization to sanction for noncompliance.

Outcome. The mediator determines how to notify the court of the outcome. The notice may state only whether a resolution was reached.

Confidentiality. Contact is allowed between the neutral and the judge for purposes of status updates only.

Neutrals

Qualifications and training. Each judge maintains a small roster of attorneys and other qualified persons who have the skills and training needed to mediate. The court has not established training requirements.

Selection for case. The mediator is selected from the court's roster by mutual agreement of the parties and the court. Selection depends on the needs of the case and may require (1) a person with specific training in mediation; (2) a person with specific expertise in the subject matter giving rise to the dispute; or (3) a person with particular sensitivity or hands-on experience with the issues. The parties may also propose a mediator not on the court's roster.

Disqualification. The mediator must disclose any potential conflicts.

Immunity. The court indicates that mediator immunity is established by legal precedent.

Fees. The parties pay the mediator's fee, which varies from case to case. Generally, the parties agree on the total amount to be spent and share the costs equally. If they do not, the judge specifically states who is responsible for payment and sets a maximum amount the mediator may charge.

Program administration

Each judge administers his or her cases.

Eastern District of Louisiana

IN BRIEF

Process summary

ADR generally. Under its CJRA plan, effective December 1, 1993, the Eastern District of Louisiana authorizes the assigned judge to refer appropriate cases to private mediation with party consent and to mandate use of the minitrial or summary jury trial with or without party consent. The CJRA plan also authorizes the assigned judge to use any other ADR processes endorsed by the district. The court has not established procedures for ADR use and expects case-by-case use, initiated and administered by the parties or the assigned judge.

Judicial settlement conferences. Pursuant to the court's CJRA plan and uniform scheduling order, judicial settlement conferences may be held at any time at the request of a party. The assigned judge may preside or arrange for another district judge or a magistrate judge to conduct the settlement conference. Counsel of record with authority to

bind must attend. The presiding judge may require that the party or its representative who has settlement authority attend the conference.

The district's CJRA plan also requires the assigned judge or the courtroom deputy to discuss with counsel at the preliminary scheduling conference the possibility of future settlement conferences or of an early neutral evaluation session. Local Rule 8.01e requires counsel to conduct timely settlement negotiations to avoid costly eve-of-trial settlements. In addition, the court's uniform pretrial notice requires counsel to be fully authorized and prepared to discuss settlement with the court during the final pretrial conference. Prior settlement negotiations are also urged in the uniform pretrial notice.

Of note

Information from court. The New Orleans Chapter of the Federal Bar Association is preparing a litigation handbook for the Eastern District of Louisiana that will include information about ADR.

Plans. In January 1994, an ADR study group was appointed by the chief judge to consider whether and how court-based ADR should be developed in the district.

For more information

Warren A. Kuntz, Jr., Administrative Assistant to the Chief Judge, 504-589-7406

Middle District of Louisiana

IN BRIEF

Process summary

Mediation. The Middle District of Louisiana's CJRA plan, effective December 1, 1993, authorizes use of alternative dispute resolution programs designated for use in the district and authorizes referral of cases to private mediation with the parties' consent. See below.

Other ADR. The court's CJRA plan authorizes the judges to order nonbinding minitrials or summary jury trials with or without the parties' consent. Summary jury trials are used more often than minitrials, usually in relatively simple factual disputes or where dollar amounts are contested.

Judicial settlement conferences. All civil cases remain subject to a settlement conference with a judge. Approximately twenty-five cases were assigned to a settlement conference with a judge between January and September 1994.

Of note

Obligations of counsel. Attorneys are required to discuss their ADR options with each other and their clients and must be prepared to demonstrate that they have done so. They must also be prepared to address the case's suitability for ADR with the assigned judge at the initial conference.

Plans. The court will evaluate the court-based mediation program in 1995 to determine whether the program should be continued or expanded.

Evaluation. Questionnaires are sent to attorneys and mediators participating in the court's mediation program.

For more information

Christine Noland, U.S. Magistrate Judge, 504-389-0286

IN DEPTH

Mediation in Louisiana Middle

Overview

Description and authorization. Under its CJRA plan, effective December 1, 1993, the Middle District of Louisiana authorized a mediation program. The program, whose purpose is to help parties overcome obstacles to effective negotiation, became effective in September 1994. All civil cases are eligible for referral to mediation on consent of the parties. In practice, the court does not refer student loan cases, bankruptcy appeals, habeas corpus applications, Social Security claims, and most prisoner § 1983 cases. All others are considered on a case-by-case basis. The court offers two mediation options. Under the court's pilot court-based program, fifteen mediators have been sworn in and conduct sessions at no charge to the parties. The court may also refer cases to the Baton Rouge Bar Association, where mediators are selected from the association's roster and charge $250 for up to five hours, with additional fees negotiated for longer sessions. Both the court-based and association mediators may use shuttle diplomacy to facilitate the process, but they do not offer an evaluation of the case or give a decision to the parties. The mediation process in both programs is confidential.

Number of cases. Between September 1994, when the court's mediation program was implemented, and November 1994, approximately twenty cases were referred to mediation under the court-based program. Figures are not available for the number of cases referred to the bar association program.

Case selection

Eligibility of cases. All cases are eligible for referral to mediation. It is used most often in personal injury and contract disputes, as well as environmental, Title VII, mass torts, and other more complex cases.

Although mediation is authorized for any civil case, student loan cases, bankruptcy appeals, habeas corpus applications, Social Security claims, and most prisoner § 1983 cases are not referred.

Referral method. Any district or magistrate judge may refer a case to mediation on consent of the parties. When a referral is made to the court-based program, the magistrate judge who directs the mediation program selects a mediator and a mediation order is sent to the mediator and parties. Under the bar association's mediation process, an order is entered showing that the case is proceeding to mediation.

Opt-out or removal. The court may vacate any order of referral to a court-based mediator. In cases referred to the bar association's program, if mediation seems to be lagging, the court can set a date for trial and thus prompt the parties to decide whether to move forward with mediation.

Scheduling

Referral. Most cases are referred to mediation after discovery has been completed; however, more parties are asking for mediation earlier, before hiring and deposing certain types of experts.

Written submissions. The mediator may receive and consider affidavits, depositions, and other forms of written evidence agreed to by the parties or deemed by the mediator to be relevant and reliable. Position papers may be received in confidence. Timing for submission of these papers is at the discretion of the mediator.

Mediation session. Currently, two to three months are allotted for completion of the mediation process. In some cases, the magistrate judge who assigns the neutral sets the date and time and finds an available mediator. In those instances, the time period can be a few days or one or two months. In the court-based program, the mediation sessions are scheduled in the courthouse, at the date and time selected by the magistrate judge, if set by the magistrate judge, or by the mediator and parties. Under the bar association's program, the mediation sessions are conducted at a place and time mutually agreed to by the parties and mediator. If they cannot agree, the mediator selects the location and sets the time.

Number and length of sessions. Usually only one day is allotted for the mediation session. Normally, a session lasts three or four hours. More complex cases may require two or three days.

Program features

Discovery and motions. In cases in which the parties consent to mediation to save discovery costs, all discovery is stayed during the mediation process. In other cases, where parties need additional discovery before mediation begins, the parties are permitted to continue discovery. In every case, whether referred to the court's program or the bar association's program, the court retains full control of the case.

Party roles and sanctions. Parties with settlement authority and their counsel are required to attend all sessions. If an insurance company is a party and the representative is out of state, the representative may be allowed to be available by telephone during the mediation session. If only a board of directors can approve a final settlement, an attorney may be permitted to have present a representative who can make a recommendation to the board for later approval. There is currently no policy on sanctions for those who fail to attend.

Outcome. In the court-based program, the mediator files a certificate of completion at the end of the mediation session. The certificate merely states that the session is complete, whether a settlement was reached, and, if so, which party will be filing the motion to dismiss.

In the bar association's program, counsel for all parties must jointly do one of the following within ten days of completion of the mediation conference: (1) If the mediation results in the settlement of all claims, the parties must file a joint motion for dismissal with the court. (2) If the mediation results in the settlement of a portion of the claims, the parties must file a written report with the court describing the claims that have been settled and the claims that remain so that the court can take appropriate action. (3) If the mediation does not result in settlement of any claims, counsel for the parties must file a written report with the court so the court can take appropriate action. Within three days of completion of the conference, the mediator must file a writ-

ten report with the Baton Rouge Bar Association and must mail a copy to each party or its attorney of record and to the judge referring the case.

Confidentiality. Under the court-based program, the magistrate judge signs a confidentiality order at the same time the mediation order is issued. The confidentiality order is sent to the mediator, who signs it and has all persons attending the session sign it before beginning the session. After the session is complete, the order is filed in the record. It provides that all mediation proceedings, including private caucuses between the mediator and a party, may not be reported, recorded, placed in evidence, made known to the court or jury, or construed as an admission. The mediator may not discuss the merits of the case with the trial judge during or after mediation and may converse with another mediator only after there has been a check for conflicts of interest.

Under the bar association's program, there may be no ex parte communications between a mediator and any counsel or party on any matter related to the action except for the process of scheduling or continuing the conference.

Neutrals

Qualifications and training. To qualify as a mediator in the bar association's program, the mediators must be members in good standing of the Baton Rouge Bar Association and licensed to practice law in Louisiana by the Louisiana Supreme Court for at least five years or have been engaged in legal scholarship or teaching for at least five years. No mediation certification is required in the bar association's program.

The mediators in the court-based program must meet the bar association's qualifications or be certified by the court. Attorney-mediators must have had no disciplinary actions against them in their areas of expertise. Three nonlawyer mediators have volunteered for the program: two social workers and an engineer. All nonlawyer mediators must be certified as mediators. Two attorneys with experience in mediation have been allowed to participate without a certificate, but if the program continues, the court expects to require all mediators to be trained and certified. The court will provide training as funds allow.

Selection for case. The magistrate judge administering the court-based program selects the mediator for the case. Under the bar association's program, the association provides each party with a list of five mediators selected from its master list. Within ten days of receipt of the list, each party must strike two names from the list, then rank the remaining three names in order of preference. The mediator with the lowest combined score is appointed. If there is a tie and the parties cannot agree, the mediator is selected by drawing lots. Parties also have the option of proceeding through an independent ADR organization. Parties generally select mediators who have expertise in the subject matter of the case.

Disqualification. Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and must be disqualified in any case in which such action would be required of a justice, judge, or magistrate judge governed by 28 U.S.C. § 455. If a party who believes an assigned mediator has a conflict of interest does not bring it to the attention of the assigning judge within ten days of learning of the source of the conflict, the party will be deemed to have waived objection. The mediator has the same period of time to check for conflicts and decline the assignment.

Immunity. In the court-based program, a "hold harmless" clause is part of the confidentiality agreement signed by all participants. Under the bar association's pro-

gram, the parties agree to hold harmless the mediator, the Baton Rouge Bar Association, and the members of the Alternative Dispute Resolution Committee from any liability in connection with the mediation proceedings.

Fees. In the court-based program, parties pay a $25 administrative fee directly to the mediator to cover the mediator's travel, telephone, and photocopying costs. Under the bar association's program, the parties equally share a $300 fee paid with the filing of the application for mediation, of which $50 is a nonrefundable administrative fee. The remaining $250 is the fee for all or any part of the first five hours of mediation. If the session is longer, an additional fee is negotiated. If the case settles before the mediation session, the $250 is refunded.

Program administration

The court-based program is administered by a magistrate judge. Other judges may refer cases to the magistrate judge for referral to a mediator.

Western District of Louisiana

IN BRIEF

Process summary

Mediation and arbitration. In its CJRA plan, effective December 1, 1993, the Western District of Louisiana encourages use of alternative dispute resolution but notes that the court "will not establish formal procedures for mediation or arbitration." The court maintains a registry of mediators and arbitrators who volunteer to be on the list and provide their services at fees they set. The registry is composed primarily of attorneys but includes other professionals as well. If the parties to a case want to use ADR, they can request the court's list. The plan also authorizes judges to order nonbinding mediation or arbitration in appropriate cases. No cases have voluntarily selected or been ordered to mediation or arbitration.

Other ADR. Two of the court's magistrate judges conduct summary jury trials, and minitrials have been used in some cases. The court has also appointed special masters for settlement purposes in appropriate cases.

Judicial settlement conferences. The court holds settlement conferences on request by the parties.

Of note

Obligations of counsel. Attorneys must demonstrate in their case management statement that they have discussed ADR with opposing counsel, and they must also be prepared to discuss ADR options with the assigned judge. In addition, under the uniform scheduling order instituted under the court's CJRA plan, counsel must file an affidavit with the clerk of court certifying that they have met to discuss settlement and stating the date of the settlement discussions. Defense counsel must also attest that any settlement offer made by the plaintiff was conveyed to the defendant.

Plans. The court's CJRA committee is preparing a report for the court on how best to communicate available ADR methods to litigants.

For more information

Robert Shemwell, U.S. Magistrate Judge and Clerk of Court, 318-676-4225
Pam Mitchell, CJRA Staff Attorney, 318-670-4232

District of Maine

IN BRIEF

Process summary

ADR generally. Although the District of Maine has not established an ADR program, it encourages participation in settlement efforts throughout the course of litigation. The court has used minitrials and summary jury trials and will use other ADR techniques as appropriate. At the Rule 16 conference, the judge explores ADR's suitability with counsel.

Judicial settlement conferences. Settlement is actively discussed at the final pretrial conference, at which counsel are required to certify to the court that they have exchanged written settlement proposals and responses in accordance with the court's uniform scheduling order. Failure to comply with this requirement may result in sanctions. For cases in which the trial would be a bench trial, a judge other than the trial judge conducts the settlement conference. In appropriate cases, the judge may schedule an additional settlement conference and require party representatives with settlement authority to attend.

Of note

Obligations of counsel. Attorneys are required to discuss ADR options with each other and their clients and to demonstrate that they have done so; they must also be prepared to address the case's suitability for ADR with the assigned judge.

Plans. A subcommittee of the court's CJRA advisory group is studying current ADR use among federal practitioners. The results will inform the court's consideration of whether to establish formal court-based ADR programs.

For more information

William S. Brownell, Clerk of Court, 207-780-3356

District of Maryland

IN BRIEF

Process summary

ADR generally. The District of Maryland has not established ADR programs. In special cases the court advises counsel of various ADR alternatives, such as summary jury trials conducted by a judge.

Magistrate judge settlement conferences. Settlement conferences with the magistrate judges are available to litigants in civil cases.

Of note

Evaluation. As one of the ten comparison districts under the CJRA, the District of Maryland is part of the RAND study of the pilot and comparison districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

Clarence Goetz, Chief U. S. Magistrate Judge, 410-962-4560
J. Frederick Motz, Chief U.S. District Judge, 410-962-0782

District of Massachusetts

IN BRIEF

Process summary

ADR generally. On April 29, 1994, the District of Massachusetts authorized referral to a range of ADR processes, including early neutral evaluation, mediation, minitrial, and summary jury trial. Litigants are encouraged to explore ADR early in the case and to consider whether any of the authorized options are suited to the case. If the parties choose one, the ADR sessions are conducted by neutrals selected from bar association panels or by the judges. On request, the court provides parties with a list of private providers of ADR services. Use of special masters in appropriate cases is also encouraged. Except for special masters and private providers of ADR services, all court-sponsored ADR is available at no charge to litigants. All processes are nonbinding, and most entail no more than a three-to-four-hour session. Use of all ADR procedures is voluntary and requires the consent of all parties. From adoption of the court's ADR programs on April 29, 1994, through October 1994, approximately thirty cases were referred to mediation.

Bar association summary trial procedure. Some of the court's judges refer selected cases to a summary trial procedure managed by the Boston Bar Association. Cases referred to summary trial are tried at the courthouse before a panel of three neutrals appointed by the bar association and selected from its roster. The purpose of the procedure is to provide parties a realistic assessment of the value of their case. The proceedings include opening and closing statements by counsel and an overview of trial proofs. Evidentiary and procedural rules are few and flexible, and the panel's verdict is nonbinding. Summary trials typically last a half day and rarely more than one day. Summary trial proceedings are confidential and are not reported to the court.

Judicial settlement conferences. A settlement conference with a district or magistrate judge, other than the one assigned to the case, may be conducted at any stage of the litigation. The conference is usually requested by one or more of the parties or by the judge to whom the action is assigned. The judge assumes a variety of roles at the conference, including meeting with the parties, promoting communications, offering an objective assessment of the case, and suggesting settlement options. In appropriate cases, the judge may order that representatives of the parties with settlement authority be present.

Of note

Obligations of counsel. The court requires that counsel discuss ADR with opposing counsel and address it in their case management statement. Counsel must also be prepared to discuss the case's ADR suitability with the assigned judge.

Information from court. The court has published a brochure, *Alternative Dispute Resolution Procedures for the District of Massachusetts,* that describes the ADR programs available to litigants through the court. The court encourages counsel to read the brochure and discuss ADR options with their clients before appearing in court.

For more information

Helen Costello, Operations Manager, 617-223-9166

Eastern District of Michigan

IN BRIEF

Process summary

Case valuation (Michigan Mediation). In cases involving money damages only, judges in the Eastern District of Michigan may order parties to participate in a case valuation program administered by the nonprofit Wayne County Mediation Tribunal. See below.

Other ADR. No other ADR programs have been formally authorized by the Eastern District of Michigan, although individual judges may authorize other types of ADR at the request of the parties, and a general blessing of ADR is included in the court's CJRA plan, effective December 1, 1993.

Judicial settlement conferences. All judges are available to conduct settlement conferences in the cases assigned to them and, on request of a colleague, in cases assigned to others. Settlement conferences are held at the request of the parties at any time.

Of note

Obligations of counsel. Attorneys must be prepared to discuss the ADR options for their case with the assigned judge.

Evaluation. The court conducted an evaluation in 1987. The report, *Mediation in the Federal Court System,* was prepared by and is available from the court's administrative manager.

For more information

Judith K. Christie, Administrative Manager, 313-226-7802

IN DEPTH

Case Valuation (Michigan Mediation) in Michigan Eastern

Overview

Description and authorization. Under Local Rule 53.1, the Eastern District of Michigan provides a mandatory case valuation program known as Michigan Mediation. This pro-

gram was first established twenty years ago by the state courts and is run by the Wayne County Mediation Tribunal, a nonprofit corporation. The court has referred cases to the program for more than ten years. According to the court, the name mediation is a misnomer because the process is in essence an abbreviated hearing, which results in a nonbinding case valuation. The assigned district or magistrate judge may refer to the program any civil case in which the United States is not a party and the primary relief sought is monetary. After discovery has been completed, parties meet with a panel of three attorney-neutrals, who hear fifteen-minute presentations by each party and then return a nonbinding evaluation of the case. Each party pays a $75 fee.

Number of cases. From January through September 1994, valuation hearings were held in approximately 145 cases. During a comparable time period in 1993, 14% accepted the valuation and settled.

Case selection

Eligibility of cases. The court may refer to the program any civil case in which the United States is not a party and the relief sought is primarily money damages. The most commonly referred cases are contract, personal injury, and civil rights cases. No case types are presumed ineligible.

Referral method. District or magistrate judges may order cases to case valuation at their own motion or at the request of one party. Parties may also stipulate to referral, with the approval of the court. When a case is referred, an order of reference is sent to the parties.

Opt-out or removal. Party objections to a referral order must be made within fourteen days of the order and must be served on all parties. Referral is stayed pending the decision on the objection.

Scheduling

Referral. Cases are referred to mediation after completion of discovery.

Written submissions. At least fourteen days before the hearing, each party must file with the mediation clerk three copies of documents pertaining to the issues to be heard and three copies of a concise summary setting forth that party's factual and legal position on the issues. One copy of the documents and summary must also be served on each attorney of record. Failure to file the required materials or to serve copies on other parties subjects the offending party to a $60 penalty, which the attorney may not charge to the client without the client's written consent.

Case valuation session. The brief hearings, called mediation sessions, are arranged by the Wayne County Mediation Tribunal and are held at the tribunal's office. Notification must be sent to the parties at least forty-two days before the date set for the mediation hearing. The local rule does not specify a time period within which the mediation session must be held.

Length of sessions. Presentations are generally limited to fifteen minutes per side. In multiparty cases, some alterations in the time allotments may be made.

Program features

Discovery and motions. Cases are referred to the program after completion of discovery. Any remaining events in the case must proceed according to schedule during the valuation process.

Party roles and sanctions. Parties are not required to attend and generally do not. If they choose to attend, no testimony may be taken or permitted by any party.

Filing of award. Within fourteen days of the hearing, the panel must make a written valuation of the case and provide it to each party. If the panel's valuation is accepted by all parties, judgment is entered by the court. If the panel's valuation is rejected, the case proceeds to trial.

De novo request. Parties have twenty-eight days from receipt of the written valuation to file a written acceptance or rejection with the tribunal clerk. Failure to file a response constitutes a rejection. If the party rejecting the valuation does not obtain a verdict at trial that is more than 10% better than the valuation, that party must pay the other party's actual costs, which include "those costs and fees taxable in any civil action" and may, "where permitted by law or upon consent of the parties," include attorneys' fees.

Confidentiality. Parties are not accorded any special confidentiality protections beyond those specified by Fed. R. Evid. 408.

Neutrals

Qualifications and training. Neutrals must have at least five years of litigation experience, membership in the Michigan State Bar for five years, and substantial trial and personal injury experience representing both plaintiffs and defendants. No special training is required of neutrals. A brief orientation is offered to new members of the roster.

Selection for case. Unless the parties agree otherwise, a hearing panel is selected by the Wayne County Mediation Tribunal from a roster of attorneys maintained by the tribunal. Each panel is made up of an attorney from the plaintiff 's bar, the defense bar, and an attorney not identified as either. In cases in which special expertise or particular neutrals are desired, the parties may jointly request a "blue ribbon" panel and may select the panel members themselves from the tribunal's roster or from other sources.

Disqualification. The rules for disqualification of a neutral are the same as the Michigan state rule for disqualification of a judge.

Immunity. There is no explicitly authorized immunity protection for the neutrals.

Fees. Each party pays a $75 fee to the Mediation Tribunal. The tribunal pays the mediators. If the parties suggest a "blue-ribbon panel" of particular neutrals, they pay the selected neutrals at the market rate.

Program administration

The program is administered by the staff of the Wayne County Mediation Tribunal. Referrals are sent directly to the tribunal by the judges. Case valuations are returned to the administrative manager in the Eastern District's clerk's office, who logs the results and forwards the information to the referring judge.

Western District of Michigan

IN BRIEF

Process summary

ADR generally. Local Rule 41, adopted in 1983, states that "[t]he judges of this District favor initiation of alternative formulas for resolving disputes, saving costs and time, and permitting the parties to utilize creativity in fashioning non-coercive settlements." The rule also established a Committee on Procedures and Standards in Alternative Methods of Dispute Resolution, made up of attorneys, with the chief judge or a designee serving ex officio. As one of the demonstration districts designated by the CJRA to experiment with differentiated case management, the court's ADR programs are part of a comprehensive case management system.

Case valuation (Michigan Mediation). Since 1983, Local Rule 42 has authorized an ADR process that resembles an arbitration hearing and provides a valuation of the case. See below.

Arbitration. The Western District of Michigan is one of ten courts authorized by 28 U.S.C. §§ 651–681 to mandatorily refer certain classes of cases to nonbinding court-annexed arbitration. See below.

Voluntary facilitative mediation. The Western District of Michigan has adopted a facilitative mediation program, effective January 1, 1996. See below.

Judicial settlement conferences. Since 1983, pursuant to Local Rule 45, the court may hold a settlement conference in any civil case. Settlement options are discussed at the initial case management conference and, where the judge believes a judicial settlement conference would be helpful, a referral is entered onto the scheduling order. The district judge may conduct the conference or, as is the usual practice, may refer the case to a magistrate judge. The judges vary in the submissions they require before the conference, but customarily they order plaintiffs and defendants to be present. Between January and September 1994, 147 cases were referred to judicial settlement conferences.

Summary jury and bench trials, mini-hearings, and early neutral evaluation. Local Rule 44, adopted in 1983, authorizes use of summary jury trials, mini-hearings, and early neutral evaluation. Cases may be referred to these procedures, as well as to summary bench trials, by stipulation of the parties with approval of the court, on motion by a party with notice to opposing parties, or on the court's own motion. The judges and parties fashion these procedures in the way they believe is appropriate for the case. Each of these procedures is used in only a small number of cases each year. From January through September 1994, no cases were referred to summary jury or bench trials or to a mini-hearing. Thirteen cases were referred to early neutral evaluation.

Appointment of special master. The court's CJRA plan and Fed. R. Civ. P. 53 authorize the use of a single neutral who meets with the parties to facilitate settlement. Complex civil cases requiring specialized knowledge—for example, environmental or patent cases—are the types of cases generally referred.

Of note

Obligations of counsel. Attorneys must be prepared to discuss ADR options with the judge and must discuss in the case management statement whether ADR is suitable for the case.

Information from court. The court's brochure, *Your Day in Court: The Federal Court Experience*, includes a brief description of the ADR procedures used by the court.

Evaluation. The court's mandatory arbitration program was included in the Federal Judicial Center's evaluation of the ten mandatory arbitration programs, Barbara Meierhoefer, Court-Annexed Arbitration in Ten District Courts (Federal Judicial Center 1990). The court's current programs are included in the Center's ongoing study of the five CJRA demonstration districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

Richard A. Enslen, Chief U.S. District Judge, Chair, Judges' ADR Committee, 616-343-7542
Hugh W. Brenneman, Jr., U.S. Magistrate Judge, Court ADR Coordinator, 616-456-2568

IN DEPTH

Case Valuation (Michigan Mediation) in Michigan Western

Overview

Description and authorization. In 1983, the Western District of Michigan, through Local Rule 42, established a procedure that is similar to arbitration but is referred to by the court as mediation. To distinguish the procedure from true mediation, it is often referred to as Michigan Mediation or case valuation. The program, which was first established twenty years ago in the state courts and then adopted by the federal district courts in Michigan, is currently the most popular form of ADR in the Western District of Michigan. In cases referred to the program, counsel present their case to a panel of three neutrals (called mediators), who render an evaluation based on counsels' arguments and evidence. All civil cases are eligible and may be referred by stipulation of the parties with court approval, by motion of one party with notice to the other, and by the court's own motion. Referral is mandatory in cases whose sole basis of jurisdiction is diversity and for which the rule of decision is supplied by Michigan tort or medical malpractice law. Each party pays a fee of $150 to the mediators.

Number of cases. Between January and September 1994, 127 cases were referred to case valuation.

Case selection

Eligibility of cases. Any civil action or part thereof is eligible for referral to case valuation. Referral is mandatory in (1) all actions alleging medical malpractice under the Michigan Medical Malpractice Mediation Act (Michigan Comp. Laws §§ 600.4901–4923) and (2) all cases based on Michigan tort law under the Michigan Tort Mediation Act (Michigan Comp. Laws §§ 600.4951–4969). The following matters are generally not referred to the program: prisoner civil rights actions brought pursuant to 42 U.S.C. § 1983; petitions for writs of habeas corpus; § 2255 cases; bankruptcy appeals; and Social Security and student loan cases.

Referral method. A case may be selected for referral by stipulation of the parties with approval of the court, on motion of a party with notice to the opposing party, or on the court's own motion without notice to any party. The court's ADR options are discussed at the initial Rule 16 conference, and a referral to the case valuation process is entered

into the case management order if it is deemed appropriate. At the same time, an order is entered setting out (1) the deadline for notifying the court's ADR clerk of the selection of the neutrals, (2) the date, time, and place of the hearing, and (3) the deadline by which the session must be held.

Opt-out or removal. Parties' objections to referral must be made within ten days of the date of the court's order. A copy of the motion for reconsideration must be served on opposing counsel and the court. The ADR process is stayed pending decision on the motion unless otherwise ordered by the court.

Scheduling

Referral. The referral most frequently occurs at the initial scheduling conference, in cases mandatorily referred under Michigan law as well as in cases selected by other procedures.

Discovery and motions. Selection of a case for the ADR process has no effect on the normal progress of the case toward trial.

Written submissions. At least ten business days before the session, parties must provide to each neutral and opposing counsel all documents on questions of liability and damages, including all medical reports, bills, records, photographs, and any other documents supporting the party's claim, including a summary or brief of factual and legal positions. A fee of $60 is assessed ($20 for each neutral) if a party fails to submit documents by the time designated.

Valuation hearing. The time frame for completion of the ADR process is established in the case management and referral orders and is monitored by the ADR clerk. The ADR clerk sets the date, time, and place for the hearing if the parties fail to make their own arrangements. At least thirty days before the hearing date, the ADR clerk sends notice of the hearing to all counsel and the mediators, indicating deadlines for submission of fees and proof of service of the written submissions, as well as the date, time, and place of the hearing.

Length of hearing. Presentations to the panel are limited to thirty minutes per side unless there are multiple parties or unusual circumstances. Generally only one session is held.

Program features

Party roles and sanctions. Pursuant to Local Rule 42, parties are required to attend the hearing unless excused by the panel chair. When scars, disfigurement, or other unusual conditions exist, they may be demonstrated to the panel in person; however, no testimony may be taken from any party. In practice, the parties are almost always excused from appearing at the hearing.

Filing of award. Within ten days of the hearing, the panel must notify each counsel in writing of its valuation of the case, including all fees, costs, and interest. The award may be rendered by any two of the three mediators. Within twenty-eight days of the date of the valuation, each party must submit to the ADR clerk a written acceptance or rejection of the valuation. If all parties accept the valuation, the award is entered on the docket unsealed, and the plaintiff's counsel is directed to prepare for submission to the court a judgment consistent with the valuation and approved by opposing counsel. If any party rejects the valuation, the docket notes that the outcome is sealed.

De novo request. If a party rejects the valuation award, it must do so in writing within twenty-eight days of the mailing of the award. If the award is unanimous and the defendant accepts it but the plaintiff rejects it, the plaintiff must, to avoid payment of actual costs to the defendant, obtain a trial verdict that is more than 10% greater than the valuation. If the award is unanimous and the plaintiff accepts it but the defendant rejects it, the defendant must, to avoid payment of actual costs to the plaintiff, obtain a trial verdict that is more than 10% less than the valuation. If the panel decision is not unanimous and both parties reject the valuation and the trial verdict is not more than 10% above or below the valuation, the defendant must pay actual costs if the trial verdict is more than 10% above the valuation, and the plaintiff must pay actual costs if the trial verdict is more than 10% below the valuation. A party against whom actual costs are awardable under Local Rule 42 forfeits the right to tax costs otherwise collectable by that party. (See Local Rule 42 for discussion of Sixth Circuit and other laws regarding taxing of costs and fees as sanctions in this procedure.)

Confidentiality. Statements by counsel and the brief or summary of factual and legal positions prepared by the parties are not admissible in any court or evidentiary proceeding. If the valuation of the panel is rejected, the ADR clerk places all documents in a sealed envelope before forwarding them to the clerk of court for filing. Neither the parties nor their lawyers may reveal the award to the judge in a nonjury case.

Neutrals

Qualifications and training. An individual must be certified by the chief judge for inclusion on the court's roster. To be certified, an individual (1) must have been a member of the state bar for at least five years, (2) must be admitted to practice in the court, and (3) must be determined by the judges to be qualified to perform the duties of an ADR neutral.

Selection for case. The hearing is conducted by three lawyers. A list of neutrals (called mediators by the court) is maintained in the clerk's office. When a case is referred to case valuation, counsel for the plaintiff(s) and defendant(s) each select one neutral from the list. The third neutral is chosen by agreement of counsel. If they cannot agree, the other two neutrals select the third. If the neutrals decline to select the third, or if any party fails to choose an ADR neutral, the ADR clerk makes the selection and provides written notice to the parties. Notwithstanding these provisions, the judge assigned the case may select the third neutral, who may be someone not on the court's list and may be a magistrate judge of the district.

Disqualification. No person may serve as a neutral in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist or may in good faith be believed to exist.

Immunity. The court is unaware of any claims against a neutral in this district. Notwithstanding, the court would rely on present case law, such as *Wagshal v. Foster*, 28 F.3d 1249 (D.C. Cir. 1994) (court-appointed mediator or neutral case evaluator has absolute quasi-judicial immunity when performing official duties).

Fees. The parties pay the neutrals' fees, which are $50 per neutral per party, payable within ten days of the mailing of the notice of the hearing. An additional fee of $20 per neutral is assessed against a party who fails to pay the fee within the time designated. If notice of settlement is given to the ADR clerk at least ten days before the hearing date, the fees are returned to the parties.

Program administration

This ADR process is administered by the clerk's office. Problems that may arise are initially handled by the ADR deputy clerk, with assistance provided as needed by the court's ADR coordinator.

Arbitration in Michigan Western

Overview

Description and authorization. The arbitration program in the Western District of Michigan, which was implemented in 1985, is one of ten mandatory arbitration programs authorized under 28 U.S.C. §§ 651–658. Arbitration was at one time used extensively, but after the court implemented its CJRA plan on September 1, 1992, the number of cases referred to the arbitration program fell dramatically because the time needed to arbitrate a case does not fit well into the timeline of most of the differentiated case management tracks now in use by the court. Consequently, arbitration is now a voluntary procedure and is one among several ADR options offered by the court. Local Rule 43 describes the court's arbitration procedures. Eligible cases include most civil cases, except certain case types specified by the rule. Referrals are made at the initial scheduling conference. The procedure involves a formal hearing before a single arbitrator at which testimony is taken and arguments presented. The court pays the arbitrator's fee.

Number of cases. Between January and September 1994, nine cases were referred to arbitration.

Case selection

Eligibility of cases. Almost all civil cases are eligible for participation in arbitration. The following matters may not be referred: cases seeking money damages greater than $100,000, exclusive of punitive damages, interest, costs, and attorneys' fees (except by stipulation of the parties that the award may exceed $100,000); Social Security cases; pro se civil rights cases; any case based on an alleged violation of a right secured by the U.S. Constitution; or any case for which jurisdiction is based in whole or in part on 28 U.S.C. § 1343.

Referral method. Under the original mandatory program, eligible case types were automatically referred to arbitration by the clerk within sixty days of the last responsive pleading. Under the new voluntary program, the court's ADR options are discussed at the initial Rule 16 conference, and, if appropriate, a referral to arbitration is included in the case management order and a separate order is issued referring the case to the arbitration track. Thirty days after entry of the orders, the ADR clerk sends a notice of referral to all counsel.

Opt-out or removal. Once referred to arbitration, a party may seek to remove a case from the arbitration track by motion at any time during the arbitration process.

Scheduling

Referral. Referrals are made at the initial scheduling conference.

Discovery and motions. Discovery is limited to 120 days from the filing of the last responsive pleading. The time taken to dispose of certain motions (to dismiss, for judgment on the pleadings, to join parties, and for summary judgment) is not charged against the 120 days allowed for discovery.

Written submissions. At least ten business days before the hearing, a summary of factual and legal positions, together with copies of all documents on questions of liability and damages, must be submitted to the arbitrator and opposing counsel. Documents must include all medical records, bills, photographs, and any other document supporting the party's claim. Failure to provide documents within the time designated results in an assessment of $60, payable to the arbitrator or to the court.

Arbitration hearing. The arbitration hearing must take place within 180 days of filing of the last responsive pleading, unless the arbitration period has been stayed by the filing of motions. Hearings may be held at any location within the district designated by the arbitrator, including any courtroom or other room in the federal, state, or county courthouses. The court's ADR clerk arranges the date, time, and location of the hearing and sends notices of the hearing after the arbitrator has been selected and before the end of discovery.

Length of hearing. Each party is given two and a half hours to present its case.

Program features

Party roles and sanctions. Each individual party must attend the hearing in person. Each party that is a corporation, governmental body, or other entity must be represented by an officer or person with complete settlement authority. The court's rules do not specify whether or what type of sanctions might be imposed for failure to comply with the attendance and other requirements.

Filing of award. The arbitrator should announce the award to the parties at the close of the hearing, but in any event must file an award with the ADR clerk within ten days after the hearing. The clerk serves copies on the parties. If a demand for trial de novo is not made within thirty days of the filing of the award, the award becomes the judgment in the case. The award is sealed unless it becomes the judgment.

De novo request. Within thirty days of filing the arbitration award, any party may demand a trial de novo. The requesting party must post a bond equal to the amount the court paid the arbitrator. Once the matter is resolved, if the party requesting trial de novo has failed to better its position by 10% or more, the bond is forfeited to the court, unless the court finds the party had just cause to request the trial de novo. In cases where the parties have consented to the arbitration process, the court may also assess against the requesting party the opposing party's costs under 28 U.S.C. § 1920 and reasonable attorney's fees if (1) the requesting party fails to obtain judgment, exclusive of interest and costs, that is substantially more favorable than the arbitration award and (2) the court determines that the party's request for trial de novo was made in bad faith.

Confidentiality. There may be no ex parte communication between the arbitrator or any counsel or parties except to schedule or continue a hearing. The contents of the award must not be made known to the judge assigned to the case except as allowed by 28 U.S.C. § 654(b). No evidence of or concerning the arbitration hearing may be admitted at the trial de novo except by stipulation or as provided by 28 U.S.C. § 655(c).

Neutrals

Qualifications and training. An individual must be certified by the chief judge for inclusion on the court's roster of arbitrators. To be certified, an individual must have been a member of the state bar for at least five years, must be admitted to practice in this court, and must be determined by the judges to be qualified to perform the duties of an arbitrator. The arbitrators were trained when the program was implemented in 1986.

Selection for case. When a case is referred to arbitration and before the arbitration discovery period is over, the ADR clerk gives each party a list of arbitrators whose names have been drawn at random from the court's roster of arbitrators. The list includes one more name than there are parties to the case. Each party must strike one name. Barring any conflict of interest, the remaining name is appointed the arbitrator.

Disqualification. No person may serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist or may in good faith be believed to exist.

Immunity. The court is unaware of any claims against a neutral in the district. Notwithstanding, the court would rely on existing case law, such as *Wagshal v. Foster*, 28 F.3d 1249 (D.C. Cir. 1994) (court-appointed mediator or neutral case evaluator has absolute quasi-judicial immunity when performing official duties).

Fees. The court pays the arbitrator a fee of $250, plus expenses and mileage, per case.

Program administration

The arbitration program is administered by the clerk's office. Problems that may arise in cases are initially handled by the ADR deputy clerk, with assistance provided as needed by the court's ADR coordinator.

Voluntary Facilitative Mediation in Michigan Western

Overview

Description and authorization. The Western District of Michigan adopted a facilitative mediation program on July 7, 1995. The program, effective January 1, 1996, is a flexible, nonbinding dispute resolution process in which an impartial third party facilitates negotiations among the parties to help them reach settlement. The mediator, who may meet jointly or separately with the parties, serves as a facilitator only and does not decide issues or make findings of fact. Most civil cases are eligible for facilitative mediation, but referral is made only with consent of all parties, who equally share the mediator's normal hourly fee. The court's program has not yet been incorporated into local rules but is described in a handout, *Voluntary Facilitative Mediation Program Description*. This program is distinguished from the court's hybrid process known as Michigan Mediation, which is an evaluative form of ADR.

Number of cases. Information is not yet available.

Case Selection

Eligibility of cases. All civil cases are eligible for voluntary facilitative mediation except prisoner civil rights complaints, habeas corpus, Social Security cases, and § 2255 motions.

Referral method. In preparation for the initial Rule 16 scheduling conference, parties are encouraged to discuss the use of alternative dispute resolution and to indicate their preference in the joint status report. If the district or magistrate judge is satisfied that the selection of facilitative mediation is purely voluntary and has the full approval of all parties, the judge incorporates their selection into the case management order. After the parties have selected a mediator, the judge issues an order of referral.

Opt-out or removal. Opt-out and removal procedures are not necessary, as referral is made only with the consent of all parties.

Scheduling

Referral. Referral is made at the time of the initial Rule 16 scheduling conference.

Written submissions. Not less than seven calendar days before the initial mediation session, each party must provide the mediator with a concise memorandum of no more than ten double-spaced pages, setting forth the party's position on the issues to be resolved in mediation, including damages and liability. The mediator may distribute the party's memorandum to other parties.

Mediation session. Within fourteen days of issuance of the referral order, the mediator consults with the parties, sets a time and place for the mediation session, and sends a notice of hearing to all parties and the ADR clerk. Sessions may be conducted at the courthouse, mediator's office, or any other location agreed to by the parties. The mediator determines the length and timing of the sessions and the order in which issues are presented The initial mediation session is held within sixty days of the referral order, but the mediation process may continue as long as the parties consider it useful.

Number and length of sessions. The mediation process may involve one or several sessions, depending on the needs of the case.

Program features

Discovery and motions. Any case referred to mediation continues to be subject to management by the assigned judge. Unless otherwise ordered, parties are not precluded from filing pretrial motions or pursuing discovery.

Mediation assessment. The court assesses parties a fee of $50 per referral, of which $25 is paid by the plaintiff(s) and $25 by the defendant(s). The fees are deposited into the Voluntary Facilitative Mediation Training Fund. In the instance of a pro bono mediation, the assessment is waived.

Party roles and sanctions. Parties or individuals with settlement authority are required to attend the mediation session. The court's program description does not address the question of sanctions for noncompliance with this or other mediation requirements.

Outcome. If settlement is reached the mediator helps the parties draft a settlement agreement, as well as a stipulation and proposed order to dismiss, which is filed with the court. If settlement is not reached, the parties have seven calendar days to inform the mediator whether they want to continue with the mediation process. Within ten calendar days of completing mediation, the mediator must file a brief report with the ADR clerk and send copies to all the parties. The report indicates who participated in the mediation session and whether settlement was reached.

Confidentiality. Information disclosed during any mediation session may not be disclosed to any other party without consent of the party disclosing the information. All mediation proceedings are considered to be compromise negotiations within the meaning of Fed. R. Evid. 408.

Neutrals

Qualifications and training. To be considered for certification for the court's roster, an attorney must have a minimum of five years of practice, be an active member of the court's bar, have general peer recognition for his or her expertise, demonstrate an interest in the program, and display attributes that make it likely he or she will be successful, such as (1) the ability to listen actively; (2) the ability to analyze problems, identify and

separate the issues involved, and frame these issues for resolution or decision making; (3) the ability to use clear, neutral language; (4) sensitivity to strongly felt values of the disputants; (5) ability to deal with complex factual materials; (6) an overt commitment to honesty, dignified behavior, respect for the parties, and an ability to create and maintain control of a diverse group of disputants; (7) the ability to identify and to separate the neutral's personal values from issues under consideration; and (8) the ability to understand power imbalances. A committee of attorneys has been appointed by the court to help select and certify mediators.

The court sponsors periodic training sessions for new mediators and refresher training for currently certified mediators. Certified mediators must complete at least sixteen hours of training either sponsored or approved by the court and serve as a co-mediator in at least one case. The court may also ask mediators to attend periodic refresher seminars sponsored by the court.

Each mediator is assessed an initial fee of $100 for certification and thereafter an annual fee of $25 for recertification. The funds are held by the court in a separate account for training mediators, court personnel, and judicial staff and for education of the public and bar.

Selection for case. Within ten calendar days of issuance of the case management order, the parties must jointly choose one mediator from the list of court-certified mediators. The list discloses each mediator's hourly fee. When the parties agree on a mediator, the plaintiff is responsible for notifying the ADR clerk of the selection. If the parties cannot agree, they must notify the ADR clerk, who then makes the selection. The ADR clerk notifies the mediator and requests a check for potential conflicts of interest. If the mediator notifies the ADR clerk of a conflict, the clerk either selects an alternate mediator or asks the parties to make a new selection. Once a mediator has been selected, the ADR clerk notifies the judge assigned to the case, who issues an order of referral for facilitative mediation. A mediator may decline to serve after completing five or more mediations in a given calendar year. The court expects a mediator to serve in a pro bono capacity once each calendar year, but any further requests for pro bono appointment may be declined.

Disqualification. No person may serve as a mediator in any action in which any of the circumstances specified in 28 U.S.C. § 455 exist or in good faith are believed to exist.

Immunity. The court considers certified mediators to be officers of the court and therefore entitled to quasi-judicial immunity.

Fees. Mediators are paid their normal hourly rate, divided equally by the parties, and are responsible for billing the parties directly. In the event of noncompliance, the mediator may petition the district or magistrate judge for an order directing payment of his or her fees.

Program administration

The mediation program is administered by the clerk's office. Any problems that arise in the course of a mediation session are brought initially to the ADR clerk. The ADR clerk also collects data about the efficacy of the program and reports to the court on a regular basis.

District of Minnesota

IN BRIEF

Process summary

Magistrate judge settlement conferences. In the District of Minnesota, which is currently revising its local rules, proposed Local Rule 16.5 states that within the thirty-day period before trial, a settlement conference must be held in all civil cases except Social Security appeals and habeas corpus petitions. Trial counsel for each party as well as a party representative with full settlement authority are required to attend each settlement conference. The court may require additional settlement conferences at any other appropriate time during the pretrial period.

Although this rule has not yet been adopted, some magistrate judges have for many years routinely conducted settlement conferences. These conferences are scheduled at any time a district or magistrate judge decides it might be useful and do not stay any other proceedings in the case. Parties are generally notified by a letter or a formal notice issued by the magistrate judge. Some magistrate judges require the parties to meet before the settlement conference and to report in writing where they stood before the meeting and where they stand after it. Plaintiffs must also submit a written settlement demand and defendants must respond in writing. Participation in a settlement conference is mandatory, and all parties, as well as insurance representatives, must attend the conference. A mediation model is followed in the sessions, with both joint sessions and private caucuses held. Confidentiality is governed by Fed. R. Evid. 408. After the conference, only a minute order is filed indicating whether settlement occurred. Since January 1, 1994, the magistrate judges have conducted settlement conferences in hundreds of cases.

Other ADR. Parties may be ordered by the assigned judge to participate in other nonbinding dispute resolution programs before a district or magistrate judge, such as summary jury trials and nonbinding arbitration. The court may also order parties to use nonbinding ADR procedures conducted by a nonjudge neutral. In such instances, the parties may be ordered to bear the reasonable costs incurred by the ADR process as allocated by the court.

Of note

Obligations of counsel. Attorneys must discuss ADR with each other and must address in their joint case management plan whether and how ADR should be used in their case.

Information from court. The court is preparing a booklet for federal court litigants that outlines ADR options and defines ADR terms. The parties and counsel will be required to sign an acknowledgment stating that they have read and understand the booklet.

Plans. The court will consider and experiment with any ADR proposals that appear to have merit.

For more information

Francis E. Dosal, Clerk of Court, 612-290-3944
Franklin L. Noel, U.S. Magistrate Judge, 612-290-3181

Northern District of Mississippi

IN BRIEF

Process summary

ADR generally. The CJRA plan in the Northern District of Mississippi, effective January 1, 1994, encourages use of ADR in appropriate cases. The judges are authorized to inquire about ADR at the initial case management conference, and counsel must be prepared to advise the court of their positions on ADR. Magistrate judges generally conduct the initial case management conference and usually make a finding on the record of whether ADR is appropriate. The clerk of court maintains a list of private ADR providers for cases referred to mediation and arbitration. If an ENE or settlement conference is considered appropriate, the court conducts the conference in the ordinary course of the case management conference or pretrial conference. Summary jury and bench trials, minitrials, and settlement weeks are also authorized by the plan.

Judicial settlement conferences. The magistrate judges routinely discuss settlement at the final pretrial conference and may initiate settlement discussions at earlier stages in the case if appropriate.

For more information

Norman L. Gillespie, U.S. Magistrate Judge and Clerk of Court, 601-234-1971

Southern District of Mississippi

IN BRIEF

Process summary

ADR generally. In its CJRA plan, effective January 1, 1994, the Southern District of Mississippi encourages ADR use in appropriate cases. The court has not established a formal ADR program but provides interested parties with information about ADR resources in the community.

Judicial settlement conferences. The court has authorized mandatory settlement conferences. The initial settlement conference is held at the case management conference. Counsel may request at any time thereafter that the magistrate judge assigned to the case schedule a settlement conference.

Of note

Obligations of counsel. Attorneys must discuss ADR with opposing counsel and must be prepared to discuss ADR with the judge. Counsel are also required to discuss in their case management plan whether ADR would be suitable for their case and to demonstrate that they have discussed ADR with opposing counsel.

Information from court. The clerk's office maintains a list of ADR resources available in the community.

For more information

Alfred G. Nicols, Jr., U.S. Magistrate Judge, 601-965-4525
John Roper, U.S. Magistrate Judge, 601-432-8612
James C. Sumner, U.S. Magistrate Judge, 601-965-4292

Eastern District of Missouri

IN BRIEF

Process summary

Mediation. In the Eastern District of Missouri, the CJRA plan, effective January 1, 1994, and the court's General Order Pertaining to Alternative Dispute Resolution Procedures authorize mediation for most civil actions. See below.

Early neutral evaluation (ENE). Under the court's CJRA plan and its General Order Pertaining to Alternative Dispute Resolution Procedures, a judge may refer any civil case to early neutral evaluation. See below.

Other ADR. The court has used special masters for settlement in appropriate cases.

Judicial settlement conferences. On an ad hoc basis, the judges refer cases to settlement conferences.

Of note

Obligations of counsel. Attorneys must familiarize themselves with the court's ADR programs and be prepared to discuss ADR options with the judge. They must also discuss in the case management statement whether ADR is suitable for their case.

Information from court. The court encourages attorneys to familiarize themselves with its General Order Pertaining to Alternative Dispute Resolution Procedures. The court also provides an ADR procedures manual.

For more information

Sherry Compton, DCM/ADR Coordinator, 314-539-7589
Jim Woodward, Chief Deputy Clerk, 314-539-7363

IN DEPTH

Mediation in Missouri Eastern

Overview

Authorization and description. The Eastern District of Missouri's CJRA plan, effective January 1, 1994, and its General Order Pertaining to Alternative Dispute Resolution Procedures authorize the court's mediation program, an informal nonbinding dispute resolution process in which an attorney-neutral facilitates negotiations among the parties to help them reach a settlement. The program became operational on October 17, 1994. Most civil case types are eligible for referral to mediation, which may be ordered sua sponte by the judge, at the request of one party, or on stipulation of all parties. Any civil action may be referred to mediation, but the court generally will not select cases that are typically resolved without a hearing.

Number of cases. Between mid-October 1994, when the program became operational, and mid-December 1994, three cases were referred to mediation.

Case selection

Eligibility of cases. Most civil cases are eligible for referral to mediation. Particularly suitable are personal injury, products liability, and routine diversity cases; disputes involving long-term relationships; and environmental and regulatory disputes.

The court does not refer to mediation cases that would ordinarily be resolved without a hearing: appeals from rulings of administrative agencies, habeas corpus and extraordinary writs, bankruptcy appeals, Social Security cases, and prisoner civil rights cases. Cases that may also be considered unsuitable include those involving substantial issues of public policy, multiple parties, or esoteric or unsettled legal issues.

Referral method. Cases may be referred to mediation by the court on its own motion, on the motion of any party, or by stipulation of the parties. The court enters an order of referral, which includes a maximum number of days in which the parties must conclude the ADR process.

Opt-out or removal. The mediator may terminate the mediation session if the case seems inappropriate for mediation.

Scheduling

Referral. Referral may be made at any time appropriate to the case but normally occurs at the Rule 16 conference.

Written submissions. Seven days before the first meeting or conference, each party must provide the mediator and serve on all parties a summary of disputed facts and a discussion of its position on liability and damages. These documents are not court documents and are not filed in the record of the case.

Mediation session. The order of referral includes a maximum number of days in which the parties must complete the mediation process. The designated lead counsel is responsible for coordinating the date, time, and location of the initial conference, in consultation with the mediator and parties. Parties are entitled to at least fourteen days' notice of the first conference. Subsequent sessions are scheduled by the mediator in consultation with the parties. If the parties request that the conference be held in the courthouse, the clerk will make space available.

Number and length of sessions. The number and duration of the mediation sessions are determined by the mediator in consultation with the parties.

Program features

Discovery and motions. Unless otherwise ordered by the court, referral to mediation does not suspend other action in the case, and no scheduled dates for submissions or other pretrial events may be delayed or deferred, including the date of trial.

Party roles and sanctions. Unless excused by the judge, the attorney primarily responsible for the case must attend the mediation conference. Parties and corporate representatives and insurers who have authority to settle must also attend. Willful or negligent failure to attend must be reported to the court by the mediator in a compliance report, and sanctions may be imposed by the assigned judge. The judge may also impose sanctions for the failure of a party, its representatives, or counsel to proceed or participate in good faith in any other aspect of the mediation process.

Mediator's assessment report. A mediator is not required to provide the parties with written recommendations but may, at his or her discretion, offer an assessment report and a recommended settlement. This report may not be filed with the clerk or provided to the judge, but counsel must transmit it promptly to their clients.

Outcome. If the session concludes without settlement of any part of the case, the mediator must promptly file a written certification with the clerk, indicating whether there has been compliance with the judge's referral order. If the parties reach an agreement, a written settlement or a stipulation signed by all parties and counsel is filed with the court, and a copy is sent to the mediator within fourteen days of the last session.

Confidentiality. The mediation session is private. All written and oral communications made or disclosed to the mediator are confidential and may not be disclosed by the mediator, any party, or any other participant unless agreed on in writing. The mediator may not be called as a witness in any proceeding by any party or the court.

Neutrals

Qualifications and training. A candidate may be certified by the court as a neutral if he or she (1) has been admitted to the bar of the highest court of any state or the District of Columbia for at least five years and is a member in good standing, and (2) has completed a training course sponsored by the district court or a training program of at least sixteen hours provided by any sponsor accredited under Missouri Supreme Court Rule 15.04. In exceptional circumstances, an individual who does not meet these criteria may be approved for appointment to a particular case with the consent of the parties and the court.

Selection for case. Within ten days of the entry of order of referral to mediation, the parties must select a mediator from the court's list of certified neutrals and notify the clerk in writing of their choice. If they cannot agree, the clerk selects the mediator. In consultation with the parties, the judge may also appoint a person from the list who has special subject matter expertise or designate a mediator who is not on the list. The clerk sends notice of appointment to the mediator.

Disqualification. A mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and must be disqualified in any case in which such action would be required by a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

Immunity. Immunity is not provided in the rules, but neutrals on the court's panel have been advised of the holding in *Wagshal v. Foster*, 28 F.3d 1249 (D.C. Cir. 1994) (court-appointed mediator or neutral case evaluator has absolute quasi-judicial immunity when performing official duties).

Fees. The cost of the mediator's service is borne equally by the parties at the rate or fee stated in the mediator's fee schedule. The court reserves the right to review the reasonableness of the fee and to enter an order modifying it. A party may obtain appointment of a mediator who has agreed to serve pro bono if the party demonstrates to the judge a financial inability to pay a fee. The list of certified neutrals maintained by the clerk indicates which neutrals have agreed to serve pro bono.

Program administration

The ADR program is administered by the clerk's office.

Early Neutral Evaluation in Missouri Eastern

Overview

Description and authorization. The Eastern District of Missouri's CJRA plan, effective January 1, 1994, and its General Order Pertaining to Alternative Dispute Resolution Procedures authorize the court to refer civil cases to ENE in the early pretrial period for a nonbinding assessment by an experienced neutral-evaluator. The court may refer any civil case in which the judge believes the parties are likely to benefit from such a referral. The judge may order a referral to ENE sua sponte or at the request of one party.

The objective of ENE in this district is to promote early and meaningful communication, enable parties to plan their case effectively, and inform parties of the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not a primary purpose of this process.

Number of cases. The early neutral evaluation procedure became operational on October 17, 1994. No referrals had been made as of December 12, 1994.

Case selection

Eligibility of cases. The court may refer to ENE any civil case in which the judge believes the parties would be assisted by such a procedure. No cases are categorically excluded.

Referral method. At the initial scheduling conference, the court may order referral of a civil case to ENE on its own motion or on the motion of any party, if the case is one in which the judge believes all parties are likely to benefit from such referral.

Opt-out or removal. The neutral may terminate the session if the case appears inappropriate for ENE.

Scheduling

Referral. Referral occurs at the initial Rule 16 scheduling conference.

Written submissions. Seven days before the first meeting or conference each party must provide the neutral and serve on all parties a memorandum presenting a summary of disputed facts and a narrative discussion of its position relative to both liability and damages. These documents are not court documents and are not filed in the record of the case.

ENE session. The order of referral includes a maximum number of days in which the parties must conclude the ENE process. The designated lead counsel is responsible for consulting with the neutral and the parties and coordinating the date, time, and location of the initial conference. Parties must be given at least fourteen days' notice of the first conference. Subsequent sessions are scheduled by the neutral in consultation with the parties. If a party requests that the conference be held in the courthouse, the clerk will make space available.

Number and length of sessions. The number and duration of ENE sessions are determined by the neutral in consultation with the parties.

Program features

Discovery and motions. Unless otherwise ordered by the court, referral to ENE does not suspend other action in the case, and no scheduled dates for submissions or other pretrial events may be delayed or deferred, including the date of trial.

Party roles and sanctions. Unless excused by the judge, the attorney primarily responsible for the case, the parties, and corporate representatives and insurers must attend the ENE session. Willful or negligent failure to attend must be reported in a compliance report filed with the court by the neutral-evaluator. The judge may impose sanctions. The judge may also impose sanctions for any other failure of a party, its representatives, or counsel to proceed or participate in the ENE process in good faith.

Evaluator's assessment report. The evaluator is not obligated to provide the parties with written recommendations but may at his or her discretion offer an assessment report and a recommended settlement. This report may not be filed with the clerk or provided to the judge, but counsel are required to transmit it promptly to their clients.

Outcome. If the session concludes without settlement of any part of the case, the neutral files a written certification with the clerk indicating whether the parties complied with the judge's referral order. If the parties reach an agreement, a written settlement or a stipulation signed by all parties and counsel is filed with the court and a copy is sent to the neutral within fourteen days of the last conference. If referral to ENE results in decisions or agreements by the parties regarding case planning, the parties must file their plan with the court for approval and provide a copy to the neutral.

Confidentiality. The ENE session is private. All written and verbal communications made or disclosed to the neutral are confidential and may not be disclosed by the neutral, any party, or any other participant unless agreed on in writing. The neutral may not be called as a witness in any proceeding by any party or the court.

Neutrals

Qualifications and training. A candidate may be certified by the court as a neutral if he or she (1) has been admitted to the bar of the highest court of any state or the District of Columbia for at least five years and is a member in good standing, and (2) has completed a training course sponsored by the district court or a training course of at least sixteen hours provided by any sponsor accredited under Missouri Supreme Court Rule 15.04. In exceptional circumstances, an individual who does not meet these criteria may be approved for appointment to a particular case if the parties consent and if ordered by the court.

Selection for case. Within ten days of the entry of order of referral to ENE, the parties must agree on and notify the clerk in writing of their choice of a neutral from the court's roster. If the parties cannot agree, the clerk selects the neutral. The judge may also, in consultation with the parties, appoint a person from the roster who has special subject matter expertise or designate a neutral who is not on the list. The clerk sends a notice of appointment to the neutral.

Disqualification. A neutral may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and must be disqualified in any case in which such action would be required by a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

Immunity. Immunity is not an element of the program, but neutrals have been advised of the holding in *Wagshal v. Foster,* 28 F.3d 1249 (D.C. Cir. 1994) (court-appointed mediator or neutral case evaluator has absolute quasi-judicial immunity when performing official duties).

Fees. The cost of the neutral's service is borne equally by the parties at the rate or fee stated in the neutral's fee schedule. The court reserves the right to review the reasonableness of the fee and to enter an order modifying it. A party may obtain appointment

of a neutral who has agreed to serve pro bono if the party demonstrates to the judge a financial inability to pay a fee. The list of certified neutrals maintained by the clerk indicates which neutrals have agreed to serve pro bono.

Program administration

The ADR program is administered by the clerk's office.

Western District of Missouri

IN BRIEF

Process summary

Early assessment program (EAP). The Western District of Missouri is one of five demonstration districts designated by the Civil Justice Reform Act. The Act directs the district to experiment with various methods for reducing litigation costs and delay, including ADR. In response, in the spring of 1992, the court established the Early Assessment Program, an experimental program for early case evaluation and settlement. The purpose of the program is to assist parties in selecting one of the court's nonbinding ADR processes, which include mediation with an attorney-neutral, ENE, nonbinding arbitration, settlement conference with a magistrate judge, and summary jury trial. Alternatively, parties may choose to mediate their case with the EAP program administrator.

Listed below are the different forms of ADR offered as part of the Early Assessment Program, along with the number of cases referred to each type. Altogether, between January and September 1994, 147 cases were automatically referred to the EAP program; litigants in an additional 66 cases requested referral to the program. See below.

Mediation. Mediation may occur as part of the first early assessment session, in which case it is conducted by the EAP administrator, or as a follow-up to the initial session. If conducted as a follow-up, the parties may choose the EAP administrator as mediator, or they may select an attorney from the court's roster of certified neutrals. If the parties select the EAP administrator as mediator, no fees are incurred. If a neutral from the court's roster is selected, the parties pay the neutral at his or her established professional rate. Between January and September 1994, 142 of the 147 cases that were automatically referred to the EAP program selected mediation.

Early neutral evaluation (ENE). When parties select ENE as their ADR process, they may select a neutral-evaluator from the court's roster of certified neutrals or, with consent of the EAP administrator, from the private sector. In this court, ENE serves primarily as a settlement vehicle rather than as a method for case planning. Between January and September 1994, four of the cases automatically referred to the EAP program selected early neutral evaluation.

Arbitration. Under the court's arbitration procedures, a single arbitrator who is selected by the parties from the court's roster or another source presides at the hearing. The arbitrator's decision becomes a nonappealable, final judgment of the court unless a timely appeal is filed by a party. No fees are required to request a trial de novo. The

court's arbitration program was first established in 1985 and is authorized by 28 U.S.C. §§ 651–658, which designates the district as one of the ten pilot courts for mandatory nonbinding arbitration. The mandatory program is no longer in effect, having been replaced by the Early Assessment Program. Between January and September 1994, one of the cases automatically referred to the EAP program selected arbitration.

Summary jury trial and other ADR processes. The general order authorizing the EAP also broadly authorizes the use of other forms of ADR, including summary jury trial, minitrial, binding arbitration, or other "hybrid form[s] of alternative dispute resolution." These ADR processes are seldom used. If the EAP administrator approves, litigants may select a private provider of ADR services not included on the court's roster of neutrals.

Magistrate judge settlement conference. Another option under the EAP is a settlement conference with a magistrate judge. The conference is confidential and informal and may include, with party agreement, private discussions or caucuses between the magistrate judge and each side. The purpose of the conference is "to permit an informal discussion between the lawyers, parties, and the magistrate of every aspect of the lawsuit, thus permitting the magistrate privately to express his or her views concerning the actual dollar settlement value or other reasonable disposition of the case" (EAP General Order, Section VII.B.4). Cases not referred to the EAP may also be referred to the magistrate judges for settlement conferences. In these cases, referral usually occurs after discovery is complete.

Of note

Obligations of counsel. Counsel in cases assigned to the Early Assessment Program must discuss the court's ADR options with their clients, opposing counsel, and the judge assigned the case.

Evaluation. The court's mandatory arbitration program was included in the Federal Judicial Center's evaluation of the ten mandatory arbitration programs, Barbara Meierhoefer, Court-Annexed Arbitration in Ten District Courts (Federal Judicial Center 1990). The Early Assessment Program is monitored on an ongoing basis by the court's EAP administrative and systems staff. As a demonstration district under the CJRA, the Western District of Missouri is also part of the Federal Judicial Center study of the demonstration districts, which will be reported to Congress by the Judicial Conference in 1996.

For more information

Kent Snapp, Administrator, Early Assessment Program, 816-426-3060

IN DEPTH

Early Assessment Program in Missouri Western

Overview

Description and authorization. As a demonstration district under the Civil Justice Reform Act, the Western District of Missouri has established an experimental ADR program to encourage early case evaluation and settlement. The program was implemented in the spring of 1992 in the Kansas City Division and is called the Early Assessment Program (EAP). One-third of all eligible civil cases are randomly assigned to mandatory

participation in the Early Assessment Program. Another one-third of eligible civil cases are invited to participate, and the remaining one-third are excluded from participation as a research control group. The court adopted the random assignment system to provide the comparison groups needed to evaluate the effects of the EAP program. Program details are set out in the court's General Order Regarding the Early Assessment Program.

In cases referred to the EAP, counsel and parties are required to meet with the EAP administrator within thirty days of filing responsive pleadings to pursue early assessment and settlement of their case. The goals of the program are to improve party-to-party communication, assess the case and its management needs early, attempt early solution of the case through facilitated negotiation, and help litigants select a nonbinding ADR process from the district's ADR menu. As originally conceived, the initial early assessment session was to be followed by a mandatory referral to an ADR process of the parties' choice—mediation, ENE, nonbinding arbitration, settlement conference with a magistrate judge, and summary jury trial. In practice, almost all cases have remained with the EAP administrator for further settlement assistance, with the mediation session often occurring at the initial assessment session. There is no fee for the administrator's services, whereas if parties use a neutral from the court's roster, they must pay the neutral's fees.

Trial counsel and parties with full settlement authority must attend the early assessment session. The facts and law of the case are discussed by the parties in joint session, and then the EAP administrator meets separately with each side in confidential sessions. Any discovery or other problems inhibiting early case evaluation are identified, possible solutions are discussed, and facilitated negotiations are started. If limited discovery is needed for assessment or settlement, or if additional time is advisable for other reasons, a second meeting is scheduled. An average of 1.6 meetings are held per case. Parties are required to attend all scheduled EAP meetings unless the EAP administrator determines otherwise.

Number of cases. Between January and September 1994, 147 cases were automatically referred to the EAP. Litigants in an additional 66 cases requested entry into the program. Almost all cases were mediated by the program administrator, with a few cases choosing ENE, mediation, or arbitration conducted by a neutral selected from the court's roster.

Case selection

Eligibility of cases. Almost all newly filed civil cases are randomly placed in one of three categories. One-third of the cases are assigned to the EAP and are required to attend an early assessment meeting with the program administrator. One-third are invited to participate in the EAP if all parties consent. The remaining one-third of the cases are a control group and are not allowed to participate in the program.

The following case types are not eligible for assignment to the EAP: multidistrict cases, Social Security appeals, bankruptcy appeals, habeas corpus actions, class actions, student loan cases, prisoner pro se cases, and other pro se cases in which a motion for appointment of counsel is pending.

Referral method. At filing, cases randomly designated for automatic inclusion in the Early Assessment Program are sent a notice of inclusion. On filing of responsive pleadings, cases eligible to volunteer for the program are sent an invitation to participate. At

the initial EAP session, parties in the automatic referral group must choose some form of ADR, which may be conducted by the EAP administrator (if it is mediation) or a court-certified neutral (for any form of ADR). Parties voluntarily participating in the EAP may choose, after the first session, to discontinue their efforts or to stay in the program. If they stay in the program, they may select any form of ADR, including mediation with the EAP administrator or any process conducted by an attorney-neutral.

Opt-out or removal. Parties may request removal from automatic inclusion in the EAP by letter to the EAP administrator within ten days of receiving the notice of inclusion. An appeal of the EAP administrator's decision to the assigned district judge is permitted. Withdrawal is granted when the EAP administrator or the judge believes that ADR cannot help the case.

Scheduling

Referral. The parties must make their ADR selection at the first early assessment meeting, which is scheduled within thirty days of filing responsive pleadings.

Written submissions. Parties are not required to submit any written statements before the EAP session. However, if parties select either arbitration or early neutral evaluation, the following requirements apply:

Arbitration: At least seven days before the hearing, each party must serve on all parties a list of all witnesses and depositions to be presented at the hearing, as well as copies of written exhibits. In addition, each party must submit a statement to the arbitrator summarizing claims, critical factual issues, and contested legal issues.

ENE: At least seven days before the evaluation session, each party must submit to the evaluator and all parties a statement of ten pages or less describing the facts and law, identifying disputed legal and factual issues, and indicating whether any early rulings or additional discovery would assist settlement. Counsel and parties attending the ENE session are also identified. Significant documents and other evidence may be attached.

EAP sessions. Early assessment meetings are held at the courthouse, and the first meeting is scheduled within thirty days of the filing of responsive pleadings. Generally, cases subject to the EAP must complete any follow-up sessions and limited discovery within 90 days of the first session. The goal is to dispose of the case, if possible, within 120 days of the filing of responsive pleadings.

For cases that select an ADR procedure other than mediation with the EAP administrator, the administrator helps the parties and the neutral set the date and location for the initial ADR session. For cases that select arbitration, the time frame for the arbitration hearing is set by the program administrator. Within ten days of selecting an arbitrator, counsel are required to file a report with the EAP administrator stating the agreed-on hearing date.

Number and length of sessions. The initial EAP session generally lasts from two and a half to three hours. The average number of sessions per case is 1.6 sessions.

Program features

Discovery and motions. All other case activities, including discovery and motion practice, must go forward during the early assessment process and any subsequent ADR processes.

Party roles and sanctions. In addition to counsel, parties with full settlement authority are required to attend the initial early assessment meeting. Party representatives with

full settlement authority must also attend any subsequent EAP sessions and ADR sessions (arbitration, mediation, or early neutral evaluation). If a party fails to make a good faith effort to participate in the initial assessment meeting or any subsequent meetings, or fails to comply with any other program requirements in accordance with the provisions and spirit of the court's general order authorizing the EAP, the assigned judge or the court may impose appropriate sanctions. To date, none have been requested.

Outcome of ADR sessions. Within ten days of the conclusion of any ADR session, the neutral must file a report with the EAP administrator stating whether all required parties were present and whether or not the case settled. In all cases subject to the EAP, the program administrator notifies the assigned district judge when the case has completed the EAP process.

In cases that select arbitration, the arbitrator files a written award with the program administrator promptly after the hearing ends. The award becomes a final judgment unless a party files a statement of nonacceptance with the administrator within thirty days of the filing of the award. In cases involving multiple claims or parties, any part of the arbitration award not specifically rejected by a party becomes part of the final judgment of the court.

Confidentiality. In accordance with Fed. R. Evid. 408, any written or oral communication not under oath made in connection with this program may not be disclosed by the parties, their counsel, the neutrals, or any other participant in the program to anybody unrelated to the program. Further, communications made in connection with the program may not be used for any purpose, including impeachment of any witness or party in any pending or future proceeding in this court.

Communication between the program administrator or any other neutral and the assigned judge is authorized in limited circumstances. The administrator advises the assigned judge when a settlement has been reached and when he believes that the EAP process will not help the case. The administrator and neutrals may also bring to the attention of the assigned judge or the court en banc any noncompliance by parties or lawyers with this court's general order authorizing the EAP.

Neutrals

Qualifications and training. To be included on the court's roster of neutrals, a candidate must be either (1) a former federal judge or Missouri state judge with arbitration or mediation experience, or (2) a lawyer admitted to practice in the district, a current member of the Missouri bar, and a member of a state bar for at least eight years. In addition, all applicants for the court's roster must satisfy the court's training requirements. Those who want to be mediators or evaluators must complete sixteen hours of training in mediation and case evaluation certified under Missouri Supreme Court Rule 17 or by the district court, or a reasonable equivalent thereof. Arbitrator candidates must complete four hours of training certified under Missouri Supreme Court Rule 17, certified by the district court, or a reasonable equivalent thereof.

Selection for case. The program administrator, a court staff member with an extensive litigation background, hosts the initial EAP session and serves as mediator if the parties request.

For parties that choose to pursue ADR with a neutral other than the program administrator, the court has established a roster of court-certified mediators, arbitrators, and

evaluators. The parties may select any ADR neutral on the court's roster or, with the program administrator's approval, a neutral not on the court's list. If the parties cannot agree on a neutral, the administrator will give them a random listing of neutrals for striking. When the EAP administrator prepares a list of neutral candidates, he or she does not usually select the potential neutrals for their subject matter expertise.

Disqualification. Mediators are disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and must disqualify themselves in any action in which they would be required by 28 U.S.C. § 455 if serving as a judge. Any party who believes that a neutral has a conflict of interest or should be disqualified must notify the EAP administrator immediately.

Immunity. The EAP administrator is presumed to have quasi-judicial immunity.

Fees. There is no fee when the EAP administrator serves as the mediator. The parties pay other neutrals at the rate set by the neutral and listed in his or her application with the court. The neutral's fees are borne equally by the parties.

Program administration

The EAP is directed by the program administrator, who reports to the district judges. The program administrator is assisted by a management analyst and a program secretary, both of whom are clerk's office employees operating under the supervision of the EAP administrator.

District of Montana

IN BRIEF

Process summary

Magistrate judge settlement conferences. Local Rule 235-5 provides that the district judge presiding in a case may, if a party requests in writing or on the judge's own initiative, order the parties to participate in a settlement conference convened by the court. This is the court's only formal settlement procedure.

The assigned judge has discretion to order a settlement conference, but the judge usually makes this determination in consultation with the parties. All civil cases, except Social Security cases, pro se prisoner petitions, and bankruptcy appeals, are eligible to participate. Settlement conferences are routinely scheduled in the case management plan authorized by the court's CJRA plan, effective April 1, 1992, and generally are held after discovery has been completed but far enough before trial to avoid the costs of trial preparation. A settlement conference may be held, however, at any time if the presiding judge, in consultation with counsel, determines that settlement is a realistic possibility.

The settlement conference is convened by a magistrate judge on direction of the district judge. The procedures used for the specific case are determined by the assigned magistrate judge. In general, the magistrate judge requires each party to submit a written overview of the case before the conference so the magistrate judge may become familiar with the case and the parties' settlement positions. These submissions, as well as any oral communications, are held in confidence by the magistrate judge. Every party

or a representative with full settlement authority must attend the settlement conference.

Of note

Obligations of counsel. Parties or their counsel, or both, are required to discuss settlement with the magistrate or district judge who presides at the initial scheduling conference.

Plans. The CJRA advisory group recommended against a court-wide ADR program, noting the efficiency of the magistrate judge settlement conferences and its support by the bench, bar, and litigants. The court will continue to assess the need for a court-wide ADR program.

For more information

Robert M. Holter, U.S. Magistrate Judge, 406-727-0028
Richard W. Anderson, U.S. Magistrate Judge, 406-657-6804
Leif B. Erickson, U.S. Magistrate Judge, 406-329-3386

District of Nebraska

IN BRIEF

Process summary

Mediation. Under its Mediation Plan, adopted January 9, 1995, the District of Nebraska has authorized mediation for civil cases. See below.

Of note

Evaluation. The clerk is charged with evaluating the effectiveness of mediation in each case and assessing party satisfaction, cost savings, and time savings. The clerk must report to the court annually on the effects of the mediation program.

For more information

Lyle E. Strom, Senior Judge, 402-221-3421

IN DEPTH

Mediation in Nebraska

Overview

Description and authorization. The District of Nebraska authorized use of mediation in civil cases pursuant to a general order and its *Mediation Plan*, which was adopted January 9, 1995. Under the program, which went into effect in June 1995, any district or magistrate judge may refer a case to mediation when the nature of the case and the amount in controversy make resolution by mediation a possibility. Party consent is not required. Cases are referred after the answer is filed and after consultation with the parties. All other proceedings in the case are stayed on referral to mediation. Cases are

referred to one of several mediation centers operated by the State of Nebraska Office of Dispute Resolution. At the mediation session, the parties may be required to present information to help the mediator understand the issues and the parties' interests. The mediator helps the parties by identifying issues, generating options, and proposing solutions, but he or she does not offer an evaluation of the legal merits of the case. Mediation proceedings are confidential. The fee, which is paid by the parties, is set by the mediation center handling the case, but is not more than $100 an hour.

Number of cases. No information is available on the number of cases referred to the mediation process.

Case selection

Eligibility of cases. A case may be referred to mediation when the judge determines that the nature of the case and the amount in controversy, together with the information available regarding the possibility of settlement, make resolution of the case by mediation a possibility. Such cases may include, but are not limited to: employment cases in which the parties have not previously engaged in conciliation proceedings; cases involving policy or practice questions that lend themselves to negotiation regarding actions or procedures to be taken in the future; cases in which the litigation costs are high in relation to the amount in controversy; cases in which the amount in controversy is determined to be less than $100,000; and cases in which the United States is a party and the parties to the litigation have not previously engaged in negotiations, work-out arrangements, or similar efforts. No case types are excluded from consideration for mediation.

Referral method. The assigned judge is authorized to refer any civil case to mediation after conferring with the parties and/or counsel. Party consent is not required. An order referring the case to the appropriate mediation center is issued by the judge.

Opt-out or removal. Any party may file an objection to the mediation referral within seven days of the court's order. If the party objects to a specific substantive matter or procedure, it must propose an alternative after discussing the matter with opposing counsel. Unless all parties agree to the proposal, the assigned judge will confer with counsel and/or parties to attempt to resolve the objection.

Scheduling

Referral. Cases are referred as soon as practicable after all defendants have answered the complaint.

Written submissions. There is no rule requiring written submissions. However, before the mediation session the mediator may ask counsel and/or the parties to provide information about the case, including material documents, exhibits and statements concerning the dispute, and information about any previous attempts to resolve it.

Mediation session. Within twenty days of the referral order, counsel must confer with the staff of the mediation center to schedule the mediation session. The mediation center sets the date, time, and location of the session, which must be held within sixty days of the order of referral or within ninety days if all parties agree to a continuance. Except as specifically provided by the court's *Mediation Plan,* mediation sessions must be conducted in accordance with the Nebraska Dispute Resolution Act (Neb. Rev. Stat. §§ 25-2901 to 25-2920).

Number and length of sessions. This information is not yet available.

Program features

Discovery and motions. The assigned judge stays all proceedings in the case pending the outcome of mediation.

Party roles and sanctions. All parties and counsel must attend the mediation session. Failure to attend may result in sanctions against the offending party and/or counsel.

Outcome. Within five days of the mediation session, the mediation center must report to the clerk whether the case settled and whether the fees for the mediation have been paid. If the case does not settle, the clerk notifies the assigned district or magistrate judge, who restores the case to the docket.

Confidentiality. All written or oral statements made only during the course of the mediation proceeding are confidential and are not admissible in evidence for any reason at trial should the case not settle.

Neutrals

Qualifications and training. An individual may be certified by the court to serve as a mediator if he or she has qualified under the requirements of the Nebraska Dispute Resolution Act; is an attorney in good standing in the state of Nebraska and the district court; has been admitted to practice law in any state for at least five years; and has completed at least fifteen hours of specialized training in mediating cases in federal court. Certification is effective for a period of five years, and a certified mediator is eligible for recertification for succeeding periods of five years. The court is offering training in mediation in cooperation with the Nebraska Office of Dispute Resolution.

Selection for case. The court maintains a list of certified mediators, which is made available to counsel and the public on request. The court also provides the list to the Nebraska Office of Dispute Resolution for use by its mediation centers. When a case is referred to a mediation center, the center selects a mediator from those certified by the federal court. In exceptional circumstances, an individual not certified by the court may be appointed to serve as mediator if the parties consent and the judge approves.

Disqualification. Mediators must meet the ethical standards established by the Nebraska Office of Dispute Resolution. In addition, a mediator: (1) must not have represented any of the parties in any previous matter; (2) must not be or have been affiliated with any firm or professional corporation or association that has represented any of the parties; (3) must not have any financial or other interest in any organization or entity that is a party or is related to a party; (4) must not hold any position, interest, or relationship to any party that might reasonably cause the mediator's impartiality to be questioned; (5) must not hold any personal interest, bias, or prejudice for or against any party; and (6) must not represent any of the parties for a period of at least six months following the mediation and after that may represent one of the parties only in a matter that is clearly distinct from the mediated issues. A mediator must withdraw if any of these requirements are not met or if any party so requests and makes a showing that the mediator does not meet these requirements or the court's standards for certification. Once the mediator withdraws, he or she may not act on behalf of any of the parties in the matter that was the subject of the mediation.

Immunity. The court has not addressed this issue.

Fees. The mediator is paid by the parties at a rate established in conjunction with the mediation center but not greater than $100 an hour. The fee may be divided equally or

split in another way if the parties agree. If one or more of the parties is proceeding in forma pauperis, the mediation fees of that party may be paid from the Federal Practice Fund.

Program administration

The clerk's office administers the program.

District of Nevada

IN BRIEF

Process summary

Early case evaluation in prisoner cases (triage hearings). Under Local Rule 185, the court began an experimental ADR program in 1994 for in forma pauperis pro se prisoner cases. Under the program, called early case evaluation or triage hearings, summary hearings are held in selected cases before service of process, discovery, and motion practice occur. Cases are selected for the program by the assigned district or magistrate judge after a screening for frivolousness. The judge issues a minute order notifying parties of the mandatory referral and setting the time and place of the hearing. The evaluation hearings usually last about fifteen minutes. The prisoner is required to attend, usually by telephone, along with a representative of the state office of the Attorney General. The hearing is on the record.

The court reports that judges, pro se law clerks, attorneys in the Nevada office of the Attorney General, Nevada Department of Prison officials, and inmates have expressed satisfaction with the hearings. Between January and September 1994, approximately 75 cases were referred to the program.

Other ADR. Under 1992 revisions to Local Rule 185, judges in the district are authorized to set any appropriate civil case for summary jury trial or other form of ADR.

Magistrate judge settlement conferences. Local Rule 185 also authorizes use of magistrate judge settlement conferences, which are usually ordered by the assigned judge on a case-by-case basis.

Of note

Plans. The court and the district's CJRA advisory group are monitoring ADR developments in the courts nationally to determine whether additional ADR initiatives would be beneficial to litigants in the district.

Evaluation. The Federal Judicial Center is currently conducting a study of the early case evaluation program in pro se prisoner cases.

For more information

Howard D. McKibben, U.S. District Judge, 702-784-5111

District of New Hampshire

IN BRIEF

Process summary

ADR generally. Although the District of New Hampshire declined, in its December 1, 1993, CJRA plan, to establish a formal ADR program because of existing workload and resources, the court promotes settlement efforts at every stage of a case and encourages parties to consider voluntary use of private ADR services. ADR use in the district requires consent of all parties. The summary jury trial has been used by some judges.

Judicial settlement conferences. Settlement is discussed at the final pretrial conference, which is held in all trial-ready cases. All judges are available to hold settlement conferences, either at their discretion or on request of counsel. In appropriate cases, the assigned judge will ask another judge to host the settlement conference.

Of note

Obligations of counsel. Counsel must be prepared to discuss the case's suitability for ADR with the assigned judge.

Information from court. The court's publication, *Provisional Handbook for Summary Jury Trial Proceedings*, describes the court's summary jury trial process.

Plans. The court will reconsider its approach to ADR annually and may consider offering litigants a menu of ADR options, including neutral evaluation, mediation, nonbinding arbitration, binding arbitration, summary jury trial, and minitrial.

For more information

James R. Starr, Clerk of Court, 603-225-1423

District of New Jersey

IN BRIEF

Process summary

Arbitration. New Jersey is one of the ten districts authorized by 28 U.S.C. §§ 651–658 to provide mandatory, nonbinding court-annexed arbitration in cases involving monetary claims only of $100,000 or less. Under General Rule 49, eligible cases are automatically referred to arbitration. See below.

Mediation. Under its CJRA plan, effective December 31, 1991, and General Rule 49, the District of New Jersey has established a mandatory mediation program targeted at complex civil cases. See below.

Other ADR. Consensual use of arbitration, mediation, minitrial, summary jury trial, and summary bench trial are also authorized by General Rules 47 and 49. Between January and September 1994, several cases were referred to mediation and arbitration at the request of the parties.

Judicial settlement conferences. Mandatory settlement conferences with judges are an established settlement method of the court.

Of note

Obligations of counsel. Attorneys are required to discuss ADR options with their clients and each other, address the case's ADR suitability in their case management statement, and be prepared to discuss ADR's use in the case with the assigned judge.

Information from court. The court has prepared two publications—*Guidelines for Arbitration* and *Guidelines for Mediation*—to explain the court's programs to counsel and clients. The judges also frequently participate in bench-bar programs to discuss the court's ADR programs.

Evaluation. The district's arbitration program has been studied by the Federal Judicial Center. See Barbara Meierhoefer, Court-Annexed Arbitration in Ten District Courts (Federal Judicial Center 1990). The court's Lawyers Advisory Committee also conducted a survey of arbitrators in 1993; the results are available from the court. The court has not conducted any formal evaluation of its mediation program, but it routinely sends questionnaires to attorneys and parties who participate in the process.

For more information

Ronald J. Hedges, U.S. Magistrate Judge, 201-645-2247 or 3827

IN DEPTH

Arbitration in New Jersey

Overview

Description and authorization. New Jersey is one of ten districts authorized by 28 U.S.C. §§ 651–658 to provide mandatory, nonbinding court-annexed arbitration in cases involving money damages only of $100,000 or less. Parties may also elect to use arbitration by consent. Cases are automatically referred to arbitration at the time the complaint is filed, and the arbitration hearing is held after discovery is completed. A single arbitrator presides and is compensated by the court at court-set fees. The program, which is governed by the district's General Rule 47, was implemented in March 1985 and is described for litigants and counsel in the court's pamphlet, *Guidelines for Arbitration*.

Number of cases. Between January and September 1994, approximately 1,235 cases were referred to arbitration.

Case selection

Eligibility of cases. Eligible cases are those involving money damages only of $100,000 or less, exclusive of interest, costs, and claims for punitive damages. Parties may also consent to arbitration in any civil action regardless of the amount in controversy. Excluded from arbitration are constitutional claims, tax refund actions, and Social Security actions.

Referral method. All eligible cases are automatically referred to mandatory arbitration when complaints are filed. Parties are notified of the referral by written notice from the clerk's office, and the arbitration referral is discussed at the initial case management conference. Parties in cases not eligible for automatic referral may elect to use arbitration by consent.

Opt-out or removal. A party may request, at filing or subsequently by motion, that an otherwise eligible case be excluded from arbitration. The assigned district or magistrate

judge may also exempt a case from arbitration sua sponte or on the recommendation of the arbitrator if the matter involves complex or novel legal issues, if legal issues predominate over factual issues, or for other good cause.

Scheduling

Referral. Eligible cases are automatically referred to mandatory arbitration at the time the complaint is filed.

Discovery and motions. Discovery is permitted for the period specified in the scheduling order entered by the assigned district or magistrate judge in every case. If timely filed dispositive motions are pending at the time of the arbitration hearing, a party or parties may request that the arbitration hearing be postponed until the motion is decided.

Written submissions. Before the arbitration hearing, the clerk sends the arbitrator all the pleadings, and each counsel provides the arbitrator and adverse counsel with copies of all exhibits.

Arbitration hearing. Arbitration hearings are held at the courthouse, and logistical arrangements are made by court staff. Hearings are conducted after discovery and dispositive motion practice is completed.

Length of hearing. Hearings generally last about three hours.

Program features

Party roles and sanctions. In addition to counsel, all parties, corporate representatives, and any other necessary claims professionals with full settlement authority are required to attend the hearing. Local rules authorize sanctions for noncompliance with arbitration procedures, but noncompliance is exceedingly rare.

Filing of award. A written award is filed by the arbitrator within thirty days of the hearing. The award is not docketed or entered as a judgment until the time period for demanding a trial de novo has expired.

De novo request. A party requesting a trial de novo must do so within thirty days of the filing of the arbitration award. When requesting a trial de novo, the moving party must deposit $150 with the clerk. The sum is returned if the party obtains a final judgment more favorable than the arbitration award or if the court determines, pursuant to a timely motion, that the demand for trial de novo was made for good cause.

Confidentiality. Neither the clerk nor any party or attorney may disclose the contents of the arbitration award to any judge to whom the action is or may be assigned. Contact between the arbitrator and the assigned judge is not permitted, except in instances of noncompliance with arbitration procedures.

Neutrals

Qualifications and training. To serve as an arbitrator, attorneys must have practiced law at least five years, be admitted to the bar in the district, be recommended by the court's committee on arbitration, and be determined by the chief judge to be competent to perform the duties of an arbitrator. In practice, the panel of approximately 150 certified arbitrators has an average of fifteen to twenty years of federal litigation experience. No training is required to serve on the court's panel of arbitrators.

Selection for case. The court assigns one attorney, selected randomly from the court's roster, to serve as arbitrator.

Disqualification. After receiving notice of appointment, the arbitrator is required

under General Rule 47 to inform all parties in writing whether the arbitrator, or any firm or member of any firm with which he or she is affiliated, has (either as a party or attorney) at any time within the past five years been involved in litigation with or represented any party to the arbitration, or any agency, division, or employee of such a party.

Arbitrators are disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and must disqualify themselves in any action in which they would be required under 28 U.S.C § 455 to disqualify themselves if they were a justice, judge, or magistrate judge.

Immunity. Immunity is not addressed in the court rules.

Fees. The court sets and pays the arbitrator's fee, which is currently $250 per case. If parties use arbitration by consent, they must pay the arbitrator's fee.

Program administration

The arbitration program is administered by the clerk's office. Problems arising in specific cases are handled by the assigned district or magistrate judge.

Mediation in New Jersey

Overview

Description and authorization. The District of New Jersey established a mandatory mediation program for complex cases under the district's CJRA plan, effective December 31, 1991. The plan authorizes the assigned judge to refer civil cases to mediation at any time during the litigation. Judges may refer cases sua sponte or with party consent. There is no limit on the number of cases judges may refer with party consent, but they are permitted to refer only two complex cases to the program at any one time sua sponte. Attorney-mediators, trained and selected by the court, serve without compensation for the first six hours of service. Thereafter, the parties share the mediator's court-set fee of $150 an hour.

The mediation program is governed by General Rule 49 and is described for litigants and counsel in the court's pamphlet, *Guidelines for Mediation*. Mediation began as an experimental program in the spring of 1992, but it became a permanent court-wide program in November 1993.

Number of cases. Between January and September 1994, seventeen cases were referred to mediation.

Case selection

Eligibility of cases. The mandatory mediation program was established for complex cases, designated as Track II cases by the court, such as complex patent and environmental cases. All civil case types, however, are eligible for referral to mediation. No civil case types are excluded by rule from participation.

Referral method. The assigned judge may refer any case to mediation on his or her own initiative. Only two complex cases may be referred to mediation by a judge without party consent at any time. There are no per-judge limits on referrals made with party consent. When a case is referred to mediation, an order of referral is entered.

Opt-out or removal. Court rules do not provide a mechanism for removing a case from referral to mediation.

Scheduling

Referral. A case may be referred to mediation at any time in the litigation.

Written submissions. Parties submit a position paper of ten pages or less to the mediator. Other essential papers may be appended, but pleadings are not submitted unless requested by the mediator.

Mediation session. Logistical arrangements for the mediation session are made jointly by the mediator and the parties. The mediation session can be held at any convenient location. The mediation process must generally be concluded within sixty days of the referral date.

Number and length of sessions. The number and length of mediation sessions vary depending on the case.

Program features

Discovery and motions. When a case is referred to mediation, all proceedings, including pretrial motions and pursuit of discovery, are stayed for a sixty-day period. To extend the stay, the parties and the mediator must apply jointly. The district's *Guidelines for Mediation* states that the purpose of the stay is to give parties a reasonable period of time to reach settlement. If it appears unlikely that settlement will be reached before the stay expires, the mediator may ask that the case be restored to the active calendar.

Party roles and sanctions. The mediator may order the parties to attend the mediation session. The court's plan does not specify whether or what type of sanctions might be imposed for failure to comply with the attendance and other requirements.

Outcome. Nothing is filed with the court at the conclusion of the mediation process.

Confidentiality. All information presented to the mediator is, if a party requests, held confidential and may not be disclosed by anyone, including the mediator, without consent except as necessary to advise the court of an apparent failure to participate. The mediator may not be subpoenaed by any party. Statements made and documents prepared for mediation may not be disclosed in any subsequent proceeding or construed as admissions. No communication between the neutral and the assigned judge is permitted.

Neutrals

Qualifications and training. To qualify as a mediator, a lawyer must be a member of the New Jersey state bar for at least five years, be admitted to practice in the district, be deemed competent to serve as a mediator by the chief judge, and have satisfactorily completed the training program offered by the court. The court's mediation training consists of two days (sixteen hours) of lectures, simulations, and role play exercises.

Selection for case. In a mandatory referral to mediation, the compliance judge selects the mediator from the court's roster. In appropriate cases, two co-mediators may be appointed. When parties consent to mediation, they may select a neutral from the court's roster or from any other source.

Disqualification. General Rule 49B addresses mediator conflicts of interest and provides:

> 1. A mediator must disclose to the parties and to the compliance judge any current, past, or future representation or consulting relationship with or pecuniary interest in any party or attorney involved in the mediation.
> 2. A mediator must disclose to the parties any close personal relationship or other circumstance that might reasonably raise a question as to the mediator's impartiality.

3. The burden of disclosure rests on the mediator. All such disclosures must be made as soon as practical after the mediator becomes aware of the interest or the relationship. After appropriate disclosure, the mediator may serve if all parties so desire. If the mediator believes or perceives that there is a clear conflict of interest, the mediator must withdraw irrespective of the expressed desires of the parties.
4. In no circumstance may a mediator represent any party in any matter during the mediation.
5. A mediator may not use the mediation process to solicit, encourage, or otherwise incur future professional services with any party.

Immunity. The question of mediator immunity is not directly addressed by the mediation procedures, but General Rule 49A.3 provides that "[e]ach mediator shall, for the purpose of performing his or her duties, be deemed a quasi-judge of the Court."

Fees. Mediators serve without compensation for the first six hours of service; thereafter parties equally share the mediator's court-set fee of $150 an hour. The mediator has the discretion to extend the mediation beyond the initial six hours.

Program administration

The mediation program is administered by the compliance judge designated by the court.

District of New Mexico

IN BRIEF

Process summary

Magistrate judge settlement conferences. Mandatory settlement conferences with the magistrate judge assigned to the case are held in all civil cases, except prisoner petitions, contract recovery cases, and Social Security appeals. The settlement conferences are generally held near the close of discovery and are confidential. At the request of the assigned judge, a magistrate judge other than the one assigned to the case or another district judge will conduct the settlement conference. Between January and December 1994, approximately 300 cases participated in mandatory settlement conferences with the assigned magistrate judge.

Other ADR. Judges in the District of New Mexico have used summary jury trials, minitrials, and special masters as facilitators of settlement. In its CJRA plan, effective January 1, 1993, the court asks the district and magistrate judges to consider additional procedures that may lead to settlement, such as consensual arbitration, mediation, conciliation, and settlement conferences. The CJRA plan indicates that the court will establish a roster of attorney-neutrals to serve as mediators and arbitrators and recommends that the district and magistrate judges discuss ADR options with parties at the initial pretrial conference.

For more information

Contact the courtroom deputy for each judge.